

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

953

JOINT APPENDIX

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,111

MOSES-ECCO COMPANY, INC.
and
RAY GAINS, INC.,
Appellants.

v.

LINNEY WILLIAMS,
Appellee.

*APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA*

United States Court of Appeals
for the District of Columbia Circuit

FILED AUG 2 1967

Nathan J. Paulson
CLERK

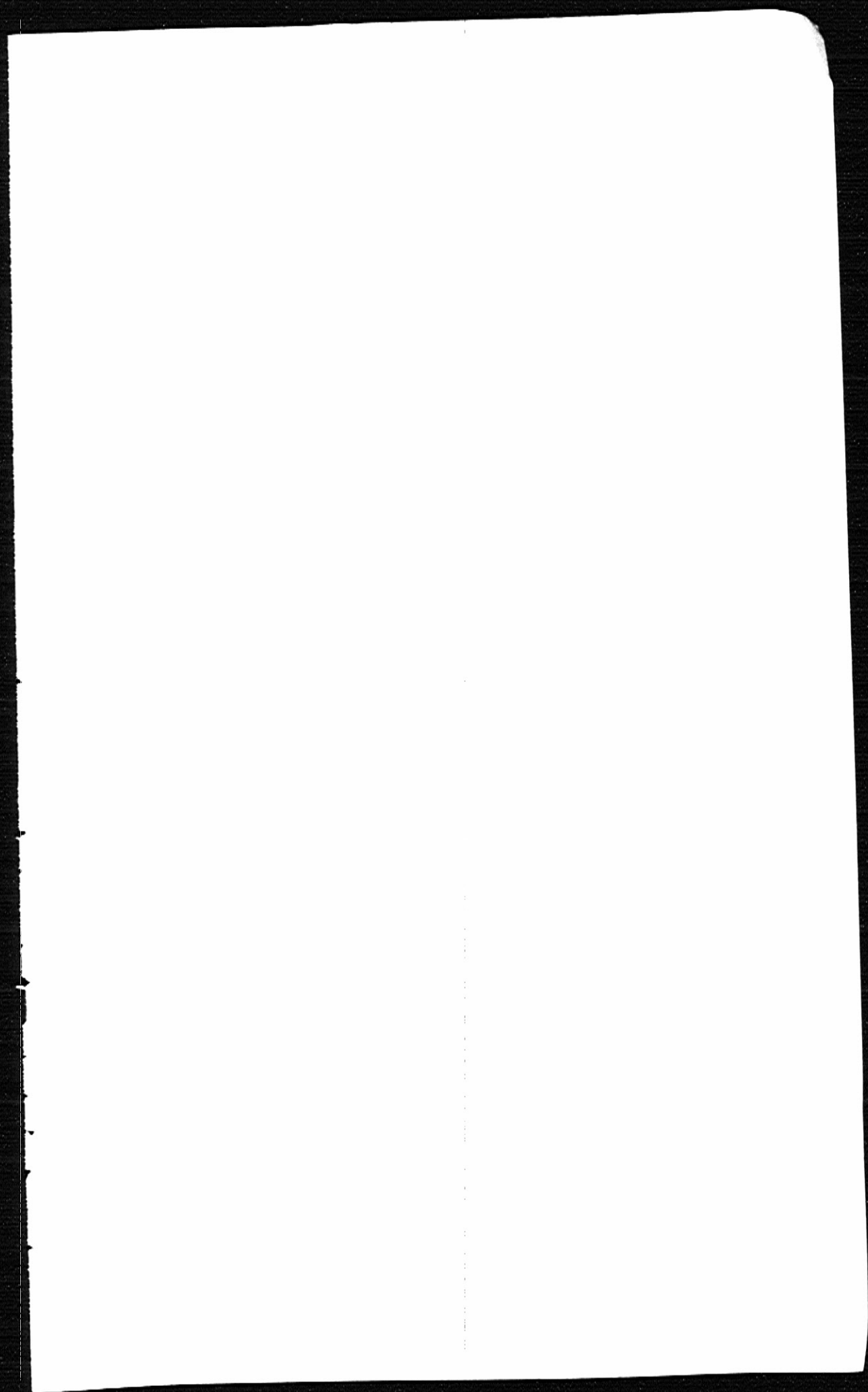


TABLE OF CONTENTS

Amended Complaint for Negligence	1
Answer of Defendant Moses-Ecco to Complaint	3
Answer of Defendant Moses-Ecco Company, Inc. to Amended Complaint	4
Answer of Defendant Ray Gains, Inc., to Amended Com- plaint	5
Pretrial Order	6
Pretrial Statement of Plaintiff	112
Excerpts from the Proceedings:	
Testimony of Linney Williams	10
Direct Examination	22
Cross Examination	23
Redirect Examination	26
Recross Examination	26
Testimony of Ronald Vermillon	30
Direct Examination	30
Testimony of Charles Hubbell	34
Direct Examination	36
Cross Examination	41
Redirect Examination	41
Testimony of John Snively	41
Direct Examination	43
Cross Examination	46
Redirect Examination	46
Testimony of John Toomey	46
Direct Examination	53
Cross Examination (by Mr. Mahoney)	54
Cross Examination (by Mr. Gionfriddo)	57
Redirect Examination	57
Testimony of Alexis Smislova	58
Direct Examination	64
Cross Examination	69
Redirect Examination	70
Recross Examination	70

(ii)

Testimony of V. J. Manning	
Direct Examination	74
Cross Examination	77
Testimony of Richmond Garlinski	
Direct Examination	84
Cross Examination	86
Redirect Examination	91
Recross Examination	92
Testimony of Joseph Matezyk	
Direct Examination	93
Cross Examination	96
Testimony of Preston R. George	
Direct Examination in Rebuttal	98
Cross Examination in Rebuttal	103
Redirect Examination	106
Motion for Judgment n.o.v. or in the Alternative for a new Trial	109
Motion of Defendant Moses-Ecco to Set Aside Verdict for Plaintiff or in the Alternative, for a New Trial and for a Remittitur	109
Motion To Amend Complaint To Increase Ad Damnum Clause to Conform to Verdict	110
Notice of Appeal	111
Photograph of diagram	111

[Filed July 29, 1964]

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

LINNEY WILLIAMS and his wife,
VIRGINIA WILLIAMS
1026 North Vermont Street
Arlington, Virginia,

Plaintiffs,

v.

MOSES-ECCO COMPANY, INC.
Serve: Registered Agent
C. T. Corporation System
Munsey Building
Washington, D. C.

and

DISTRICT CONCRETE COMPANY, INC.
4800 Branch Avenue, S.E.
Washington 23, D. C.

and

RAY GAINS, INC.
7600 Georgia Avenue, N.W.
Washington, D. C.

Defendants.

Civil Action
No. 3036-61

AMENDED COMPLAINT FOR NEGLIGENCE
(fall)

COUNT I

1. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00).
2. Prior to July 31, 1961, the defendants agreed to perform certain duties in the construction of the Glenridge Shopping Center, Prince George's County, Maryland. The defendant Moses-Ecco agreed to install certain anchor bolts and pour concrete; the defendant District Concrete agreed

to mix, prepare and deliver concrete; and the defendant Ray Gains agreed to install the reinforcing rods around which the concrete was to be poured.

3. At the time of the installation of the reinforcing rods, anchor bolts and the pouring of the concrete mentioned above, and at all times thereafter up to and including the date above-stated, defendants knew or should have known that the concrete supported by the anchor bolts would be used by the employees of other contractors performing work on the building and would necessarily have to be used by such persons.

4. On July 31, 1961, the plaintiff was in the employ of Kenmar Steel Construction Company and was engaged in working in and about the building above-described.

5. At the time and place mentioned above, the plaintiff during the course of his work activity was required to and did go upon certain steel supported by the rods, anchor bolts and concrete above-described. Then and there and as a result of the negligence of the defendant District Concrete in preparing and mixing the concrete; of the defendant Ray Gains in setting and installing the reinforcing rods; and of defendant Moses-Ecco in pouring and distributing concrete, in direct violation of prescribed safety standards and construction specifications, the steel fell resulting in injury to the plaintiff hereinafter alleged.

6. As a further result of the negligence of the defendant, the plaintiff sustained severe and disabling injury to left eye, left arm, and back requiring prolonged medical attention and hospitalization and numerous bruises, contusions and shock to his nervous system.

7. As a further result of the negligence of the defendant, the male plaintiff has suffered and will continue to suffer much physical pain and mental anguish, has incurred and will continue to incur substantial expense for medical care and attention and has experienced a loss of earnings and earning capacity.

WHEREFORE, the male plaintiff demands judgment against the defendant in the amount of Forty-five Thousand Dollars (\$45,000.00) as damages, plus costs.

LEE C. ASHCRAFT
MARTIN E. GEREL
JOSEPH H. KOONZ, JR.
WILLIAM E. O'NEILL, JR.

925 - 15th Street, N.W.
Washington, D. C.

Attorneys for Plaintiffs

JURY TRIAL REQUESTED
JOSEPH H. KOONZ, JR.

[Filed Oct. 9, 1961]

**ANSWER OF DEFENDANT MOSES-ECCO
TO COMPLAINT**

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

Defendant admits that at the time alleged in paragraph 2 it was engaged in certain concrete work in the construction of Glenridge Shopping Center, Prince George's County, Maryland; denies the allegations of paragraph 3; admits the allegations of paragraph 4; denies the allegations of paragraph 5; denies negligence as alleged in paragraphs 6 and 7, and avers that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations thereof; and, denies each and every other allegation of the complaint not hereinbefore specifically answered.

Third Defense

The accident and the alleged consequences thereof were caused by the negligent and improper steel construction practices of Kenmar Steel Construction Company.

Fourth Defense

The accident and the alleged consequences thereof were caused by the sole or contributory negligence of plaintiff Linney Williams, or he assumed the risk thereof.

PLEDGER & EDGERTON

John F. Mahoney, Jr.
925 Washington Building
Washington 5, D. C.
Attorneys for defendant

[Certificate of Service - October 6, 1961]

[Filed Oct. 5, 1964]

**ANSWER OF DEFENDANT MOSES-ECCO
COMPANY, INC. TO AMENDED COMPLAINT**

In answer to the amended complaint defendant Moses-Ecco Company, Inc. adopts by reference and incorporates herein its answers and defenses to the original complaint.

PLEDGER, EDGERTON
& MAHONEY

John F. Mahoney, Jr.
925 Washington Building
Washington, D. C.
*Attorneys for defendant
Moses-Ecco Company, Inc.*

[Certificate of Service - October 2, 1964]

[Filed Aug. 12, 1964]

**ANSWER OF DEFENDANT RAY GAINS, INC.,
TO AMENDED COMPLAINT**

Comes now the defendant, Ray Gains, Inc., and for answer to the amended complaint filed herein states as follows:

First Defense

The complaint fails to state a cause of action upon which relief may be granted.

Second Defense

This defendant admits that it was engaged in certain construction work at the Glenridge Shopping Center and that it did perform the functions for which it was engaged. This defendant also admits that the plaintiff, Linney Williams, was an employee of Kenmar Steel Construction Company at the time alleged in the complaint.

Third Defense

This defendant denies all allegations of negligence and is without information or knowledge sufficient to form a belief concerning the injuries and damages alleged and demands strict proof thereof.

Fourth Defense

This defendant avers that injuries and damages, if any, sustained by the plaintiffs were a result of the sole or contributory negligence of the plaintiff, Linney Williams, or the sole or concurring negligence of plaintiff's fellow employees or defendants, Moses-Ecco Company, Inc., and District Concrete Company, Inc.

All allegations of plaintiffs' complaint which are not herein specifically admitted, avoided, or denied, are denied.

WHEREFORE, having answered the complaint, defendant, Ray Gains, Inc., prays that it will be dismissed as against it.

M. S. MAZZUCHI

By: John F. Gionfriddo
405 Investment Building
Washington, D. C.
*Attorneys for Defendant,
Ray Gains, Inc.*

[Certificate of Service - August 1964]

[Filed Nov. 10, 1965]

PRETRIAL ORDER

Damages for personal injuries due to negligence.

THE PARTIES AGREE TO THE FOLLOWING STATEMENT OF FACTS AND STIPULATE THERETO:

On July 31, 1961, the P Linney Williams was employed by Kenmar Steel Construction Company and was engaged in working as an ironworker and welder at the site of the Glenridge Shopping Center, Prince George's County, Maryland.

Prior to the said date, D, Subcontractor Moses-Ecco Company, agreed with the general contractor to install certain anchor bolts and pour concrete required in the construction of the shopping center.

The D District Concrete Company, Inc., on the date alleged supplied certain ready mix concrete to D Moses-Ecco Company, Inc. at the jobsite.

Defendant Ray Gains, Inc. agreed to install reinforcing rods around which the concrete was to be poured.

THE P On said date was injured when a steel column fell pulling down with it other steel columns, beams and the bar joist on which the P was welding. He asserts that his injuries and damages were caused by the negligence and violations of safety standards by the Ds. His specific allegations as to the respective Ds' negligence; his claimed injuries and special damages are set out in the statement which is attached hereto, made a part hereof, and incorporated herein by reference marked "A".*

THE DEFENDANT MOSES-ECCO COMPANY, INC. denies all the allegations of negligence made herein; the accident and the alleged consequences thereof were caused by the negligent and improper steel construction practices of Kenmar Steel Construction Company, male P's employer, in that it erected the steel columns in the concrete hurriedly, without proper support, and attempted to secure the bar joists to the beams when some of the columns were out of plumb, all of which contributed to a hazardous condition.

THE DEFENDANT DISTRICT CONCRETE COMPANY, INC. asserts that the concrete it delivered to the job was mixed under instructions and specifications supplied by defendant Moses-Ecco Co., Inc. and under final instructions and approval at the said job site; denies that it had any agreement with anyone other than D Moses-Ecco Co., Inc. in respect to the furnishing of ready mixed concrete, or that it had anything whatsoever to do with pouring of the concrete to form any part of the building under construction.

Further, this defendant is advised that another supplier or other suppliers of ready mixed concrete furnished and delivered ready mixed concrete to the said job site; and this defendant has no means of knowing whether it supplied the concrete involved or included as the support for the certain steel referred to in the amended complaint, and demands strict proof thereof.

If this D furnished the ready mixed concrete used in the support for the certain steel in question, this D had no con-

*Pretrial Statement of Plaintiff referred to appears at JA-112.

trol over and did not participate in either the pouring of the concrete, the placing of the reinforcing rods, the allowing of the concrete to set or the placing of any steel beams, columns or supports thereon. And, in such case, this defendant denies that "in preparing and mixing the concrete" it was negligent or that the same was "in direct violation of prescribed safety standards and construction specifications" as alleged by Ps.

This D objects to any claim by P that D.C. Standards and Regs. are applicable or were violated in P's employment.

ALL THREE DEFENDANTS assert that the P assumed the risk voluntarily and if he was injured and damaged as claimed such injuries and damages were caused by his contributory negligence in that he was an experienced worker on construction jobs in the installation of steel columns, beams, joists and he went out and worked on a beam or joist without checking and making sure that same was safe and adequately secured and could be done safely; failed to insure that the column was sufficiently secured to hold his weight; failed to secure the skeletal structure on which he was working to avoid collapse under the weight of workmen going upon it.

THE DEFENDANT RAY GAINS denies all allegations of negligence.

STIPULATIONS

Counsel for P shall furnish to Clerk of the Court and to opposing counsel on or before December 1, 1966, a written statement which will specifically indicate as to Ds the specifications allegedly violated by each D and whose specifications were violated; the specific safety standards of either the District of Columbia or Maryland allegedly violated by the Ds; how or wherein the Ds and which of them failed to properly install or secure anchor bolts or pour concrete; how or wherein any D failed to mix or pour concrete in accordance with what instructions or specifications and by whom such instructions or specifications were issued; and

finally whether the P will contend at trial that there was a failure to add a sufficient amount of calcium chloride, or added too much calcium chloride and which D was responsible for this act of omission or commission.

Witnesses known to Moses-Ecco Co., Inc.: Alexis Smislova, P.E., Consulting Engineer, 8718 Colesville Rd., Silver Spring, Maryland; Francis J. Manning, 4019 Aurora Drive, Kensington, Maryland; Alfred Detwiler, 928 Maple St., Fairfax, Virginia; John L. Detwiler, Box 65, Centerville, Virginia; John P. Hook, Prince George's County Dept. of Building Inspections; Victor Emerick, General Superintendent for the Stanford Construction Company.

The parties agree to file with the Clerk of the Court and to mutually exchange, on or before Dec. 1, 1966 a list of the names and addresses of any witnesses known to them other than those listed herein, including medical and expert witnesses, who have knowledge of any aspect of this case, indicating those who may be used at the trial. Impeachment witnesses are not to be included.

The parties agree to the mutual exchange of all medical reports of examining or treating physicians, now in hand, on or before Dec. 1, 1966, and a similar exchange of all other such reports within 48 hours of the alert of this case for trial.

Counsel for P agrees to make the P available for the purpose of a physical examination by physician of Ds' choice before, but not to interfere with, trial.

Counsel for Moses-Ecco Company, Inc. agrees to produce the specifications applicable to the job if available following which same may be admitted in evidence without formal proof, subject to all legal objections. Counsel for Moses-Ecco agrees to produce at trial any contracts which may be in existence to which it was a party concerning this job, reserving the right however, to object to the introduction of any said documents as evidence.

The following may be admitted in evidence without formal proof subject to all legal objections: hospital records, x-ray plate, HEW Mortality table, Maryland Building Code Regulations, of which counsel advises Clerk of Court opposing counsel in writing as indicated hereinabove

Pretrial Examiner

Joseph H. Koonz, Jr., Attorney for Plaintiffs

John F. Mahoney, Jr., Attorney for Moses-Ecco

Albert F. Beasley, Attorney for District Concrete Co., Inc.

John F. Gionfriddo, Attorney for Ray Gains, Inc.

EXCERPTS FROM THE PROCEEDINGS

TESTIMONY OF LINNEY WILLIAMS

[3] DIRECT EXAMINATION

BY MR. KOONZ:

Q. Would you state your full name? A. Linney Williams.

Q. Where do you live? A. 9101 King Mill Road, Springfield, Virginia.

Q. Are you married? A. Yes, sir.

* * *

Q. Mr. Williams, how old are you now? A. Forty-five.

Q. What is your trade or occupation? A. Iron worker.

Q. For how long have you been so engaged in the trade of iron work? [4] A. Since 1950, in the structural part of it.

Q. Can you give us at this juncture just a brief idea of what your job is or has been as an iron worker? A. Well, erecting steel and welding, anything in the trade of erecting steel.

Q. Anything in the erection of steel? A. Yes, sir.

Q. Prior to July 31, 1961, can you tell us what your overall general health was? A. Good.

Q. Did you have any problems or difficulty performing your usual work as an iron worker? A. No, sir.

Q. Were you a member of the union in the Washington area? A. Local 5. It is an iron workers local union.

Q. As a result of your membership in the union did you from time to time go to various construction jobs in the metropolitan area? A. Yes, sir, and several other States.

Q. Did there come a time in July 1961 that you were working for Ken Mar Steel in the Glenridge Shopping Center? A. Yes, sir.

Q. Prior to July 31, 1961, how long had you been out at the Glenridge Shopping Center erecting steel? [5] A. I was approximately three weeks, something like that.

Q. Can you give us some general idea of how much steel had to be erected at this particular building? I am telling you in terms or asking you in terms of size? A. Well, there is a large Super Giant and I believe there are several other buildings there. I do not know the tonnage but it was a large, rather large, job.

Q. Your job was to erect and secure the steel? A. That is right.

* * *

Q. On July 31, 1961, what was your job that day? What were you to do on this particular job? A. I was taking some bridging between the bar joists to keep them from bending.

Q. Will you describe for his honor and the ladies and gentlemen of the jury number one, what are bar joists? A. Well, it spans from one beam to the other and then they pour the roof or the roof slab upon the bar joists. They put a decking on there and then pour the concrete, the roof on top of the bar joists.

Q. What does it look like? A. A bar joist. It is built up, it is a frame out of [6] angle iron.

* * *

BY MR. KOONZ:

Q. Where do these ends of the bar joists go? A. They lay on the beams.

Q. Are these horizontal? A. Yes, sir.

Q. From one beam to the other? A. Yes.

Q. This is around which a floor or concrete is poured?

A. Yes, your roof or something would be on this.

Q. You may return to the stand, Mr. Williams. A. Yes.

* * *

[8] BY MR. KOONZ:

Q. Now, using what you have roughly drawn, do these lines indicate a steel column? A. Yes.

Q. Is the bar joist attached to what? A. Well, it is actually not attached. The bar joist is not attached. The beams would be from this to this (indicating) and then the bar joist lays on this beam here and one out here.

Q. So you have three things, steel columns— A. And your beams.

Q. And a beam which is horizontal and a bar joist—

A. Which lays on one to the other.

Q. What were you doing when this whole thing fell? A. I was on the bar joist. There were bar joists all through. I was tacking, welding an angle from here to the next one.

[9] Q. How long were those sets of bar joists? A. Approximately 40 feet, 35-40 feet.

Q. They span from one beam to the other? A. Yes.

Q. You have been doing that for how long? A. Well, a couple of hours probably, maybe half a day. I do not remember exactly.

Q. Now, it is this job, this welding, that bridging that you were doing when the steel fell, is this the usual practice? A. It is the usual practice, yes, sir.

* * *

Q. On this particular day, what steel had already been up? A. There was quite a bit up. We had set quite a bit of steel before, bar joists, columns of steel and all that.

Q. Will you return now to the stand. A. Yes.

Q. While you were seated on this bar joist, what were

[10] you using? A. I had a welding hood over my face and a welding electrode in my hand.

Q. A torch? A. No, sir, I was not using a torch. I was using an electrode welding machine.

Q. What were you doing? A. I was welding them from one to the other.

Q. Who else was up there on the joist with you? A. Jack Snavelly.

Q. Is he a fellow iron worker? A. Yes.

Q. Was there a crane? A. Yes, sir.

Q. What was the function of the crane? A. It would pick up this steel and swing it in place wherever it was supposed to be.

Q. What steel? A. At this particular time it was a landing bar joist.

Q. Was this Mr. Snavelly's job, as you recall? A. Charles E. Hubbell. He was on the crane. He was the operator.

Q. What happened to you? A. Well, the steel fell and I went down.

THE COURT: What kind of steel?

[11] THE WITNESS: The bar joist and beam and the column.

BY MR. KOONZ:

Q. And you fell to what, Mr. Williams? A. I fell to the concrete below.

Q. Do you know approximately how far you fell? A. It is about 28 feet.

Q. Do you recall to what you landed, what part of your body? A. My arm was hurt very bad, but I was hurt all over. I just hit the concrete and the steel was on me.

Q. Were you then unconscious? A. I had a dim view of things. I was not completely unconscious.

Q. Did you then go from there to the hospital? A. Yes, sir.

* * *

[14] Q. Mr. Williams, in your trade you are considered a structural steel worker? A. Yes, sir.

Q. Now, are there such things as reinforced rod men or

reinforcing steel workers? A. Yes, there are. There is a trade of it.

Q. This is a separate union and separate trade? A. Yes, sir.

Q. In your particular trade have you lost any opportunity for work because of the condition of your elbow? A. Well, the union has helped a lot. They have sent me out.

THE COURT: The only question is have you lost work, sir, and if so, what I suppose.

THE WITNESS: No, sir. I do not believe I have.

* * *

[15] BY MR. MAHONEY:

Q. Mr. Williams, on the morning of the accident, July 31, the column which I have indicated on the board, in the diagram, number one, was put up that morning, is that right?

A. Yes, sir.

Q. Did you help in erecting that column? A. Yes, I did.

Q. What did you do? A. Well I believe I was hooking on that day.

Q. You mean you joined the column to the beam? A. No, sir, I believe I was hooking it to the rig that day on columns.

Q. What do you mean hook it to the rig? A. Put the shank around it.

Q. With the crane? A. Yes, if I remember that was my job that morning.

Q. When the crane moved it off, moved that column over and put it on a base plate, is that how they do it? [16]

A. Yes, sir.

Q. And the iron workers come over and secure it? A. That is right.

Q. Were you one of those iron workers? A. Yes, sir, I was an iron worker.

Q. Did you secure it to the plate? A. Not that I remember, sir.

Q. Now, there are four or five in the gang I understand. The iron worker's job is to secure that column to the base plate? A. To bolt it down, right.

[10] you using? A. I had a welding hood over my face and a welding electrode in my hand.

Q. A torch? A. No, sir, I was not using a torch. I was using an electrode welding machine.

Q. What were you doing? A. I was welding them from one to the other.

Q. Who else was up there on the joist with you? A. Jack Snively.

Q. Is he a fellow iron worker? A. Yes.

Q. Was there a crane? A. Yes, sir.

Q. What was the function of the crane? A. It would pick up this steel and swing it in place wherever it was supposed to be.

Q. What steel? A. At this particular time it was a landing bar joist.

Q. Was this Mr. Snively's job, as you recall? A. Charles E. Hubbell. He was on the crane. He was the operator.

Q. What happened to you? A. Well, the steel fell and I went down.

THE COURT: What kind of steel?

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Q. Were you then unconscious? A. I had a dim view of things. I was not completely unconscious.

Q. Did you then go from there to the hospital? A. Yes, sir.

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THE COURT: The only question is have you lost work, sir, and if so, what I suppose.

THE WITNESS: No, sir. I do not believe I have.

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Q. Did you help in erecting that column? A. Yes, I did.

Q. What did you do? A. Well I believe I was hooking on that day.

Q. You mean you joined the column to the beam? A. No, sir, I believe I was hooking it to the rig that day on columns.

Q. What do you mean hook it to the rig? A. Put the shank around it.

Q. With the crane? A. Yes, if I remember that was my job that morning.

Q. When the crane moved it off, moved that column over and put it on a base plate, is that how they do it? [16]

A. Yes, sir.

Q. And the iron workers come over and secure it? A. That is right.

Q. Were you one of those iron workers? A. Yes, sir, I was an iron worker.

Q. Did you secure it to the plate? A. Not that I remember, sir.

Q. Now, there are four or five in the gang I understand. The iron worker's job is to secure that column to the base plate? A. To bolt it down, right.

Q. That is what I wanted to ask you about. When you shinned up the column and walked over the beam and you started [20] walking down the joist - A. Out on the joist -

Q. This is a six-inch wide piece of steel? A. Approximately.

Q. My question is, where was your welding equipment? You said you were pulling that with you? A. I had my hood on. It covers your face, your complete face.

Q. As you were walking? A. No, it was up as I was walking.

Q. As you were walking along the joist were you pulling your welding equipment? A. No, sir.

Q. Where was it? A. It was hanging on the joist on the side where I had already tacked the other ones.

Q. Did you attach other joists that day? A. Oh, yes, sir.

Q. Did you move over into this joist? A. Yes, sir.

Q. How did you move from joist to joist? A. Just stepped from one over to the other. It is approximately three feet or something.

Q. Now, this joist was not attached at either end? A. No, sir.

[21] Q. Was this joist the closest to the column that fell? A. I do not remember, sir.

Q. Were you not about six feet from the column when it fell? A. Possibly. I do not know for certain.

Q. You did not shinny along the joist to get into position. You walked along there? A. Well, sometimes you shinny across. If it is limber and too wobbly, you shinny and if not, you walk.

Q. On this day you walked to the position that you wanted to weld the anchor lines to, or do you recall? A. I would say I did.

Q. Then you sat, is that correct? A. Yes.

Q. And pulled your hood down? A. That is right.

Q. And started to weld and everything fell? A. Yes, sir.

Q. It was almost spontaneous when you shifted your weight and went down on the joist and pulled your hood down and started to fall? A. No, sir.

Q. Tell me how it was done. A. I do not know. It just gave way and was down the first thing I knew. I had been doing this job.

[22] Q. But I am talking about the particular joist that fell. A. Yes, sir.

Q. You sat down and pulled your hood down and were about to weld and it closed? A. I might have been welding when it—at least one end of it was welded.

Q. You just told me, Mr. Williams, that neither end was secured. A. One end of the little angle I was putting on there. I had to weld one end on this joist that was already there and one on the other when it just fell.

Q. Now, is that what happened? When you came onto this joist, which is marked number three, you did some work down at this end. Did you weld it? A. He just set it down—no, it was not welded.

Q. What work did you do down at this end?

THE COURT: There are two ends to this joist, sir?

THE WITNESS: Yes.

THE COURT: Had you done anything to either end?

THE WITNESS: Nothing to either end.

THE COURT: What had you done something to?

THE WITNESS: The center of the joist.

BY MR. MAHONEY:

Q. Here (indicating)? A. Yes, sir.

[23] Q. What did you do there? A. I attached an angle from the joist that was fast to this joist or was in the process.

Q. There was another joist there? A. Yes, sir.

Q. In other words, you attached an angle to that? A. Right.

Q. Then did you move? A. I fell. It fell.

THE COURT: It collapsed.

BY MR. MAHONEY:

Q. Were those other joists put there that morning also? A. Part of them were, yes, sir.

Q. But it is a fact that the joist that fell was there just a few minutes before? A. I believe there was more than one joist that fell. There are some that would have been there before.

Q. What did fall, do you know? A. Well, there was some joists, columns, and beams I believe.

Q. Mr. Williams, was that column number one guy wired—any guy wire? A. No, it was not guyed.

Q. When you were sitting on this joist, just before you sat down there, did you observe the position of this column. [24] you were able to see it? A. Yes, sir, I think so.

Q. Were you able to determine whether or not this column was out of plumb at all? A. It was probably out of plumb. It probably was, yes, sir, because they had not been plumbed up. Another gang comes along and plumbs up this steel. They come along and put your guys on it and plumb it up. We do not pretend to plumb it up as we go along.

Q. Who plumbs it up? A. The next crew that comes along.

Q. You mean the Ken Mar Steel crew? A. Yes, another crew of boys.

Q. You say it probably was out of plumb. Why did you make that statement? Were the columns generally out of plumb? A. Until they are plumbed up, guyed and plumbed up they are generally out of plumb. You set a column on the anchor bolts and it is not usually plumbed.

Q. When you use the word "out of plumb", you mean that it is leaning? A. No, sir, it would be straight up and down.

Q. When it is out of plumb, then it is tilted? A. Yes, it might be tilted a little bit.

Q. So that this column was probably tilted? A. It could have been.

[25] Q. When did the steel workers, the other employees of Ken Mar, come along and guy that? How do they do that? A. After we get it all hung up, the raising man comes along and puts the steel up. The other boys come along and plumb it up and bolt it up and finishes it up.

Q. This is before you weld the bar joist? A. I do not understand.

Q. You do not guy the columns off until after you weld the bar joist? A. The bar joists are welded in the center, not the ends.

Q. It is welded to the beam, is it not? A. The second crew would do that when they come by.

Q. Mr. Williams, if this column is out of plumb, if it is tilted, it is going to pull the beam, is it not? A. No, sir, not necessarily.

Q. Is not the column attached to the beam? A. Yes, sir.

Q. So if this is going to lean, it is going to lean? A. It cannot lean but very little.

Q. It will move the beam, will it not, if it is out of plumb, if it is leaning? A. It would have.

Q. And if this leans, is this not also going to affect the distance that the joist is on the flange? A. It would not lean that much, sir. It would be very [26] little.

Q. I mean this: If this leans out and pulls the beam, this joist is going to fall because there is nothing holding these ends, is that not correct? A. Your anchor bolt holds your columns up some.

Q. You mean 500 tons of steel or more would be held up by anchor bolts? A. They plumb the steel up later after we go and anchor it. It could be a little bit out of plumb. The raising gang never plumbs the steel up.

Q. What is the purpose of guying the column off? A. To plumb it up.

Q. Is it not to secure it so it will not fall? A. No, sir, to plumb it up, just to plumb the steel up.

Q. When I say guy, am I correct that the crane would come along, the steel workers put two or three guy wires to hold or attach it to the column, is that right? A. Yes, sir, they will guy it off and plumb it up. They use those guy wires to plumb the steel up.

Q. To move it back and make sure it is plumbed before it is finally affixed? A. That is right.

Q. Before they come in with these guy wires these columns are out of plumb? [27] A. It could be a little bit out of plumb, yes, sir. If it sets flat on top of the plate and you pull the anchor bolt tight it is not very much out of plumb. It could be, but not enough to cause anything to fall.

Q. Now, the crew that affixes these anchor bolts are your co-employees- it is part of the structural steel work?

A. Yes, sir.

Q. So they are not affixed or very tight? You could have a column that would be more out of plumb? A. It is always their practice to tighten those bolts good, because that is what you are depending on to hold your steel up, your anchor bolts.

Q. That is to hold it until it is permanently affixed to the structure? A. It is completely bolted up and welded up.

Q. Did you observe the anchor bolts in this column after you fell? A. Not very much, sir.

Q. Then you were taken to the hospital? A. I was.

Q. Mr. Williams, you stated that you returned to work on March 6 or in March of 1962? A. In March of 1962.

Q. Did you return to work, sir, for Ken Mar Steel? A. No, sir, I did not.

[28] Q. For whom are you working today? Who is your present employer? A. General Bronze.

Q. Are you in structural steel work today? A. No, sir. I am setting bronze windows in the Court of Claims Building over here.

Q. How much do you earn at the present time? A. \$204 a week.

Q. Am I correct you were making \$107 [\$170] a week at the time of your accident? A. That is right.

Q. You have also, am I correct, have been working continuously since March of 1962? A. Yes, sir, we have plenty of work in the hall. They sent me out on finishing jobs and jobs that I can do.

Q. When was the last time that you received any medical attention in connection with the accident? A. I do not have the exact date, but it was after I went back to work.

Q. Would that have been some time in 1962? A. No, sir. I went back to Dr. Neviasser maybe in '63 or it might have been in '64 for X-rays and examination. I do not have the date of it.

Q. There was a time when you received fairly continuous treatment for the injury to your left arm and elbow?

[29] A. Yes, sir.

Q. When did those treatments cease. A. I believe along in March.

Q. Just before you went back to work? A. Yes.

Q. Would it be fair to state then you have not received any treatment of any kind in the last two or three years?

A. Yes, sir. I think that would be right except examination and X-rays they took of my arm later.

Q. That would have been one time in 1963 or 1964, is that right? A. That would be close.

MR. MAHONEY: I have no further questions.

CROSS EXAMINATION

BY MR. GIONFRIDDO:

Q. Mr. Williams, so that I may be clear, you talk of two separate crews that work on the superstructure. Was one the raising crew and that is a part of the crew you are a member of? A. That is right.

Q. The raising crew with the assistance of a crane I suppose hooks on the columns and stands them in place and lays the beams? A. Yes, sir.

Q. And lays the joists? [30] A. Yes, sir.

Q. And then later on another crew comes along and does what you said, plumbs and bolts it up? A. That is right.

Q. By bolting it up you mean they finally secure the nuts on the anchor bolts? A. No, sir, the bolt in the top of the columns and beams and weld the bar joists, welds the end of the bar joists.

Q. Do the welding and final securing of the bolts? A. Yes.

Q. And final tightening down here (indicating)? A. No, sir.

Q. This is tightened finally. It is rigid at the time you A. It is tightened to start with, the first thing. That is what supports it until you get up and do your work.

Q. It is this same crew that puts the guy wires up which actually do the plumbing? A. Yes, sir, they come along,

usually come along and guy off and plumb it up and bolt it up and finish the job.

MR. GIONFRIDDO: That is all. Thank you.

REDIRECT EXAMINATION

BY MR. KOONZ:

Q. This S170, this was the only scale, and this S204 is your only scale? [31] A. Yes, sir.

Q. This increase has been union raises for a six-year period? A. Yes, sir.

Q. Mr. Williams, in order to erect steel certain things have to be done, do they not? A. That is right.

Q. What activity, what must be done to the steel before it is in a position to plumb? A. It is all set up. It is erected. The steel is erected.

Q. Now, if you will, and this may be a bit repetitious, but I want to clarify it. What is set first? You have come on the job and what is there when you come to the job?

A. The foundation is poured and anchor bolts are in and you go ahead and set your columns up, tighten your nuts down on your columns.

Q. Is there a flat concrete column there when you arrive?

A. It is or a column or concrete column or something.

Q. What is sticking out of the concrete? A. Bolts, anchor bolts.

MR. KOONZ: I would like to have this marked for identification.

(The document referred to was marked Plaintiff's Exhibit No. 7 for identification.)

[32] BY MR. KOONZ:

Q. I show you what has been marked Plaintiff's Exhibit No. 7. Can you tell us what that is? A. An anchor bolt.

MR. KOONZ: I would like to show this to the jury and offer it in evidence.

THE COURT: Without objection it is received.

(Plaintiff's Exhibit No. 7 was received in evidence.)

BY MR. KOONZ:

Q. When you come on a job, Mr. Williams, does any part of this show? A. Yes, sir. A certain part of it is sticking

out of the concrete, maybe that much (indicating).

THE COURT: Is that about four inches or so?

THE WITNESS: Yes, sir.

BY MR. KOONZ:

Q. When your steel is at the job site, what does that do, the base of the steel, where does this plate go? A. It has two holes in the base plate. You set it down on top of these bolts on these bolts and you tighten them up.

Q. Where is the base plate? A. It is on the bottom of the column.

Q. And that fits where? A. On these bolts.

[33] Q. Then what do you do with the anchor bolts?

A. Tighten the nut down tight.

Q. You carry a wrench on your job? A. Yes, sir, sure do.

Q. Where is this part, and I am referring for the record to the lower end, to the hook on it? A. This is underneath the concrete rod support and steel in the concrete. This is all we ever see, from here up is what we see.

Q. Do you know from your experience and observation of other construction jobs and this particular job what is underneath this when you see this part sticking up out of the concrete? A. You depend on these anchor bolts to hold your steel. You know they are under there.

Q. When you appear on the job and you see the concrete deck with these nuts and bolts sticking out of the deck, do you know from your experience what is beneath the surface of the concrete?

MR. MAHONEY: I object to that question.

THE COURT: Is this a type of anchor bolt being used on the job where you fell, sir?

THE WITNESS: Yes, it is.

THE COURT: Am I understanding you to say, when you reach the job, there are four inches approximately that are [34] showing?

THE WITNESS: That is right.

BY MR. KOONZ:

Q. How many of these anchor bolts hold up the steel column? A. Usually two.

Q. Is this the practice in the trade? A. Yes, sir, it is.

Q. Was this done to your knowledge on this job? A. Yes, it was.

Q. Once the anchor bolts were secured, what then is the situation with regard to the column itself? A. Well, it is standing upright.

Q. Will it hold, and on this particular job, will it hold the weight of a man? A. Yes, sir. That is the only way you have to get up there and connect your other beams in. You have to be on it to connect your other beams in.

Q. Once this column is up, where do you go from there? What is the next step? A. You climb to the top of that column that is standing and when the crane swings another beam in, you connect it to the top of the column with bolts.

Q. Is this being done without guy wires? A. Yes, sir.

[35] Q. Is this the practice of the trade? A. That is the practice of the trade.

Q. You are tying a beam to the column? A. Yes, sir.

Q. With bolts. You bolt it in. On the top of the column are there openings for bolts? A. There are openings for bolts.

Q. Now, you have a column and beam going in some direction, what is the next step? A. You lay your bar joist between two beams which are existing.

Q. Is this after your columns and beams are up? A. That is after your columns and beams are up.

Q. And are they bolted to each other? A. The columns and beams are.

Q. What activity is going on on this steel during the process of this erection? What are you doing as an iron worker? A. At this particular day I was tacking angles between the two bar joists as a crane handed them up to me.

Q. Is this the practice? A. That is the practice. I had done that for several days on the same job.

Q. You had been bridging steel for a while? A. Yes, I did.

Q. Would you come down here for a second so the jury and [36] His Honor will know for sure what we are talking

about with regard to bridges. How do you tie in with your bridges and attach one bar joist to the other? A. The other bar joist is here. You would call that a bar joist (indicating). You lay the bridging from this one to this one along the center and tack them to hold it.

Q. How big is this angle iron? A. I believe these were about an inch wide.

Q. How many angle irons, pieces of iron are between each bar joist when you finish the job? A. There would be two.

Q. How many angle iron edges are between each bar joist? A. I was putting one in at the time.

Q. Had you welded the angle? A. On the other bar joist prior to this one, yes, sir, I did.

Q. Approximately how many had you done that day, the day of your accident, if you recall? A. Well, I really do not know, but maybe 25 or 30 or 50.

Q. Was all of that activity going on in the same section of steel? A. In the same job.

Q. Had any of that steel in this immediate area where you were working when the steel came down, was any of that [37] plumbed? A. Well, it had not been plumbed, but it was fairly close plumbed.

Q. Had there been any guywires? A. It had not been guyed.

Q. This activity had been going on this particular steel prior to your fall, was it not? A. Yes.

Q. Is this the normal practice in erecting steel? A. Yes, it is.

MR. KOONZ: I have no more questions.

RECROSS EXAMINATION

BY MR. MAHONEY:

Q. Mr. Williams, is this column about 25 feet high? A. That is close.

Q. How much does it weigh? A. I do not know, sir.

Q. Would it be several tons? A. Well, I have no way of knowing the weight of it.

Q. It is such a weight as to require a crane to place it down? A. Yes, it sure is.

Q. I believe you testified that you were sitting in the middle of that joist when it fell. Were you not about six feet from the column when it fell? [38] A. No, sir, I was putting them fairly close to the middle.

Q. Do you recall when I asked you certain questions and you gave certain responses at the time of your deposition in November of 1961? A. Yes, I do.

Q. I am going to ask you whether I asked these questions and whether you made these responses on page 14. A. Could I just say a word or two?

Q. Let me ask the question first.

"Q. I am talking about the column, not the joist. Where were they in relation to where you were sitting, where were the columns? How far were they from you?"

"A. I guess I must not have been over maybe six or eight foot from one of them."

"Q. Where was the other one?"

"A. Well, it was about let's see, maybe 25 foot the other way to—"

"Q. To your right?"

"A. To your right."

A. That is a column. I was in the center of the joist.

Q. My question was were you not about six feet away from the column?

THE COURT: On the joist you mean? When you were on the joist.

[39] THE WITNESS: The end of the joist was approximately six feet from the column.

BY MR. MAHONEY:

Q. I asked you earlier was it not that this joist on which you sat was placed there only a few minutes before the fall. You mentioned about 15 minutes? A. Sometimes it takes a little time to set them and get them right. It could have been only a few minutes.

Q. On page 13 of the same deposition I asked you that question:

"Q. When was that joist put up that you were sitting on?

"A. Oh maybe just a few minutes before it fell."

That was your recollection in November 1961. A. That is right.

* * *

[40] BY MR. MAHONEY:

Q. I would like to get back to the guying operation you discussed first. I believe you testified in the guying operations that this crew which is part of Ken Mar Steel put the guys on the columns and then they bolt things. is that right? A. That is right.

Q. What do they bolt? A. The beam to the columns.

Q. Are they not already bolted when you get on top of it? A. They are correction bolts. They take correction bolts out and put on a lot of times hardened steel bolts.

Q. How long were you on this structure project before you were hurt? A. Approximately three weeks.

Q. During that time I assume you had occasion to see [41] the guying crews? A. I am not certain, but I guess part of it might have been guyed behind it. I believe it was first steel we set. Some of it was guyed.

Q. What was the first steel that you set? A. The basement, down in the basement.

Q. And after that you came on this level that we are talking about now? A. Yes, sir.

Q. There is only one level to this building, is that not correct? A. I believe you had the basement, part basement.

Q. There was only one level above the basement? A. Yes, sir.

Q. And that is where the store was going, is that not right? A. Yes, sir.

Q. Now, when you discussed the guying operations, you would go on the columns first and then make the necessary connections to the bar joists and then a guying crew would come back and guy after you left or after someone did your job left? A. Plumb it up and bolt it up.

Q. Is that how this was conducted on this job? Was that the manner? [42] A. That is the way it is conducted.

Q. This is the accepted steel practice according to your testimony as to what you just testified to? A. That is the raising gang goes along and sets it and then they come and and guy it off and bolt it up.

Q. Mr. Williams, I am again going to ask you if I asked you these questions in your deposition and you made these responses on page 21:

"Q. When you arrived at work that morning when you were putting up or when the other employees were putting up the columns and beams, were any of the columns on that job guyed after they were put in place?

"A. Was any of them guyed after they was put in place?

"Q. That you know of.

"A. I do not remember seeing them.

"Q. You don't remember seeing any?

"A. No, sir.

"Q. Do you remember seeing any columns on that job that were guyed?

"MR. KOONZ: When?

"MR. MAHONEY: During the two weeks you were there, two or so weeks.

"THE WITNESS: No, sir, I do not believe I remember them putting any.

[43] "Q. You do not remember they guying any of the columns on the job?

"A. No, I don't. I don't remember them putting any guys on them.

"Q. You don't remember seeing any?

"A. No, sir.

"Q. Were you on all levels of that job, all sections?

"A. Yes, sir. I would say I covered most of it."

Did you make those responses to those questions? A. I guess I did.

MR. MAHONEY: I have no further questions.

REDIRECT EXAMINATION

BY MR. KOONZ:

Q. Mr. Williams, how long have you been in steel construction work? A. Since 1950.

Q. At the time of this accident you had been in this work about 11 years? A. That is right.

Q. Was the construction of this steel done or performed in the same manner you had been accustomed to doing in the past? A. Yes, sir, it was.

* * *

TESTIMONY OF RONALD VERMILLON

DIRECT EXAMINATION

BY MR. KOONZ:

[44] Q. Would you state your name? A. Ronald Vermillon.

Q. What is your occupation? A. Business representative, Iron Workers Local Union No. 201.

Q. What specifically does your union do on construction projects? A. We reinforce concrete.

Q. Is that an exclusive province of your union? A. Yes, sir.

Q. Is there another union that erects steel? A. The Iron Workers Local Union No. 5.

Q. Do you work with steel or iron? A. Yes, sir.

Q. How long have you been at this trade? A. Twenty years.

Q. What is your official capacity today? [45] A. I am the business representative of the Iron Workers Local 201.

Q. Have you had experience over the years placing reinforcing rods or construction rods in the Washington area? A. I have.

Q. For how long have you had such experience in the Washington area? A. Seventeen years.

Q. Are you here at my request today? A. I am.

Q. Did you bring with me at my request a reinforcing rod or piece of one? A. I did.

Q. What size did you bring? A. Number eight.

Q. Would you please get it for me? A. Yes.

MR. KOONZ: I would like to have this marked for identification.

(The reinforcing rod referred to was marked Plaintiff's Exhibit No. 8 for identification.)

BY MR. KOONZ:

Q. I show you what has been marked Plaintiff's Exhibit No. 8 and ask if you can identify that object? [46] A. That is a piece of reinforcing number eight inch round.

Q. Will you come to the blackboard please.

MR. KOONZ: I would like to offer this as Plaintiff's Exhibit No. 8.

THE COURT: Is there any objection? It is received. (Plaintiff's Exhibit No. 8 was received in evidence.)

BY MR. KOONZ:

Q. Would you show this to the jury? A. Yes.

Q. You might hand that to the jury so they can see how much it weighs.

With the use of this blackboard and this chalk in this area just sketch for me a column, what will be a concrete column for a construction job.

* * *

[64] BY MR. MAHONEY:

Q. If it please the Court, Mr. Vermillon, are you an engineer? A. No, sir.

Q. What are your present duties? A. I am a business agent for Local 201.

Q. What do you do as a business agent? A. I assign men to contractors all over the city and Virginia and Maryland and run the Union Hall.

Q. Are your duties mostly administrative then? A. No, partly.

Q. You do not engage in any construction work yourself now? A. Not at the present time.

Q. How long have you been engaged as a business agent? A. Seventeen months.

Q. When you were in steel work, what did you do? What

was your capacity? A. General foreman in my last job before I became business agent.

Q. Of which company? [65] A. Kirk Linsey, Incorporated.

Q. And you are familiar with anchor bolts and steel columns and so forth? A. Primarily I am a reinforcing worker, not a structural line worker.

Q. Now, the question that was asked you, what is the purpose of reinforcing rods in concrete, and you said to strengthen the concrete? A. To reinforce concrete I said.

Q. Now, what does that reinforce, the compressive strength of the concrete? A. Yes.

Q. Does it have anything to do with the tensile strength of concrete? A. Yes.

Q. What, does it increase it? A. I assume that is why they put it in there, yes. I am not an engineer as I said and I do not know about tensile strength. I know it is in compression because anything you are pushing down on is in compression.

* * *

[66] BY MR. MAHONEY:

Q. Say we have a 25-foot column here, steel, and let us say that it is resting on concrete which has some reinforcing steel in it, two anchor bolts, both of which are secured. The column is out of plumb.

MR. KOONZ: Objection. This is what I am talking about, Your Honor.

THE COURT: Come to the bench.

(At the bench.)

MR. KOONZ: Your Honor, I submit these questions are going out of the province of this witness' experience and knowledge. He is merely here to tell us the function of the reinforcing rods, what they do to the concrete, what support they give, and what purpose they serve. Now, to ask questions about the steel or erection itself or that of plumb is out of [67] this man's field. He is not qualified to answer these questions.

MR. MAHONEY: If he does not know the answer, I submit he can say that he does not know. He has put him

on as an expert in this type of steel work and also went beyond his reinforcing steel experience when he talked about a column of structural steel being placed on top of the reinforcing steel and what would happen.

THE COURT: That was only as I understand it in relationship to the void of 16 to 17 inches of steel in the concrete, but I think this man did say his work was primarily reinforcing work.

MR. KOONZ: He made a distinction between the two. Iron Workers Union and the other one is Steel Erectors.

THE COURT: I understand.

MR. MAHONEY: May I try to point out the difference between compressive and tensile strength. The compressive strength has nothing to do with the facts of this accident. That would be my line of questioning. I submit where there could be four dozen reinforcing rods in that concrete and it would make no difference, but the inference is otherwise, that this steel column would fall if the added reinforcing rods are not there and the anchor bolts are not there secured. I submit that is not correct.

THE COURT: Specifically what do you want to ask him?

[68] MR. MAHONEY: I want to ask him if his column is out of plumb, which we have, which the witness said it probably was.

THE COURT: He said slightly or something like that.

MR. MAHONEY: And that is attached to a beam as to whether this pressure of the top would have anything to do with the collapse.

THE COURT: If you ask him, if he does have an opinion. If he says yes, I will permit him to answer it.

MR. KOONZ: Can he ask him if he is qualified to give that answer?

THE COURT: He is a steel worker.

MR. KOONZ: There is a big difference.

THE COURT: He has recognized that. I will permit the question provided he asks him if he does have an opinion. If he does not, then he will indicate. If he does, you have a right to go further.

(In open court.)

BY MR. MAHONEY:

Q. Pointing again to Column No. 1, you assume that this is slightly out of plumb, slightly leaning, and that there is attached a beam at this point. If you know, is there any lateral pressure exerted by this beam against this column?

A. I could not answer that. I do not know.

Q. If this column were to fall, do you know or do you [69] have any opinion as to whether any lateral pressure up here would cause it to fall? Do you know? A. What is number three, another column or joist or what?

Q. This is a bar joist. But I am concerned only with this column out of plumb and the beam that is attached to it. A. I could not answer that laterally or otherwise.

* * *

TESTIMONY OF CHARLES HUBBELL

[70] DIRECT EXAMINATION

BY MR. KOONZ:

Q. Would you state your name? A. Charles Hubbell.

Q. Mr. Hubbell, what is your trade, sir? A. Crane operator.

Q. And in 1961, were you employed in the trade of operating the crane? A. Yes, sir.

Q. Do you recall, Mr. Hubbell, working at the construction site of the Giant, Super Giant store at the Glenridge Shopping Center in July of 1961? A. Yes, sir.

Q. Do you recognize this gentleman seated here at the table? A. Yes, sir.

Q. Were you operating the crane erecting steel the day Mr. Williams was hurt? [71] A. That is right.

Q. Will you tell us, Mr. Hubbell, what your job was on that day, what your function as a crane operator was? A. Putting these long spanning bar-joists in place. They have two men up on the steel. There would be one man on the ground to steer it to the fellow on the top and the other man would catch it when it came up and set it in place and Mr. Williams was sitting out in the center of them.

Q. Were you in a position to see what Mr. Williams was doing just before he fell? A. Yes, I was.

Q. You indicated he was sitting in the center. Do you know what he was doing? A. He was getting ready to weld a piece of bridging on it.

Q. Had you been on this job for a while? A. I had been there several weeks.

Q. Had you helped set most or all of the steel? A. About 80 per cent of it.

Q. How much experience have you had in setting steel, or had you had prior to that time? A. I was with Kenmar Steel for six years, between 5 and 6.

[72] Q. In this capacity were you working as a crane operator lifting steel and setting it in place on the job? A. Yes, I was.

Q. For 4 or 6 years or so your experience has been in inserting steel? A. Structural steel itself.

Q. Does this include columns, beams, and bar joists? A. That is correct.

Q. Now, I will ask you, Mr. Hubbell, what is the practice or what practice are you familiar with or has been your experience in erecting steel such as was being done in this particular job? How was it done? A. You set your columns first and then you set your steel beams with long span joists such as they had on this job. They were not set up by themselves. You have to weld bridging on them to hold them up.

Q. Was this steel bridging the accepted practice in the industry or trade of erecting the steel? A. Yes, it was.

Q. Now, do you recall when the steel fell and Mr. Williams was hurt? A. I do.

Q. Do you or were you in a position to see what happened? [73] A. The steel beam that fell fell right toward the crane. It missed the crane about two feet.

Q. The beam is the cross part, right, that goes from column to column? A. That is right.

Q. Did a column fall? A. A column and a beam fell.

Q. Did you observe the base of the column? A. Yes, I did.

Q. Where were you when you observed the base of the column? A. I was on the ground after it fell.

Q. This was after the accident? A. That is right.

Q. Mr. Williams had been carried away by this time? A. Yes, he had.

Q. On what was the steel beam resting? What was under the beam, what material? A. Concrete.

Q. Did you observe yourself what happened to that concrete base under the steel? A. The anchor bolts pulled out of the concrete.

Q. What happened to the concrete? [74] A. What happened?

Q. Did the concrete stay? A. It broke. The concrete broke. A piece of the concrete split off.

Q. Do you recall how far down the concrete broke away on this? A. Eight to ten inches I would say.

THE COURT: Eight to ten inches of what?

THE WITNESS: From the top of the column.

BY MR. KOONZ:

Q. You are saying from the connection? A. That is correct.

Q. To the top of the concrete? A. Right.

Q. Do you recall seeing any steel of any nature in this concrete? A. I did not.

MR. KOONZ: I have no more questions.

CROSS EXAMINATION

BY MR. MAHONEY:

Q. Mr. Hubbell, where was the crane in relation to the column that fell? A. About 25 to 30 feet away from the column.

[75] Q. Do you know what column that was? A. I think it was the second column from the corner of the building, either second or third.

Q. That was a column on the edge of the building? A. The outside wall, that is correct.

Q. That column fell toward you? A. That is right.

Q. In other words, it fell laterally sideways toward the

crane? A. This building ran East and West, and we were on the South wall and the column fell South.

Q. Now, when the column fell, it pulled the beam with it? A. That is correct.

Q. And Mr. Williams was sitting on a joist and the joist fell right down? A. That is right.

Q. Because the beam was pulled away from where the joist was resting? A. Yes.

Q. Do you know whether or not that joist was affixed to the beam? Was it? A. No, it was not fixed to the beam.

[76] Q. It was just leaning there? A. They were sitting on the beam.

Q. Who set them there? Did you set them there? A. Yes, I did.

Q. How soon after that column that fell, that was erected, did it fall? A. It happened so quickly. Everything just came down before you knew it.

THE COURT: I do not understand that.

BY MR. MAHONEY:

Q. Did you put that column up that day? A. Yes, I did.

Q. With the crane? A. Yes. I handled it with the crane.

Q. You assisted in the operation? A. That is right.

Q. The way you put it up you put it over the base plate and then it dropped down and was secured? A. The anchor bolts are tightened.

Q. Who tightens the anchor bolts? A. The connectors, the iron workers.

Q. Kenmar Steel people? A. Well, that is right.

[77] Q. Now, how soon after you put that column down did it fall? A. How soon?

Q. How soon? A. Well, he set a beam after the column and they set it either—I am not sure whether it was 4 or 5 long-span joists.

Q. Was it within minutes? A. Within minutes? In 15 minutes, I would say.

Q. Within 15 minutes after it was set? A. After the column was erected.

Q. Now, you testified that when the column fell towards you, fell toward the South, it pulled the anchor bolts out?

A. That is correct, out of the concrete.

Q. And broke off a piece of concrete? A. That is right.

Q. What size concrete was broken off? A. Well, I don't know what size. I did not measure it.

Q. Would you say about 6 or 8 inches? A. I would say it was that big, yes.

Q. You mean 6 inches wide? A. It was sort of a wedge shape, about 8 to 10 inches [78] long, really.

Q. Where did you observe this? A. Where did I observe this?

Q. Is this from the cab of your crane? A. No, right from the ground. This was after they had taken Williams to the hospital.

Q. That was when you went over there and looked? A. That is right.

Q. How many members of steel fell? A. A column, a beam—

Q. Was it one joist? A. There were more than one. I think it was four.

Q. Was this column at any time guyed before it fell? Were they guy wires on it? A. No, there were not.

Q. Were there guy wires on any of the columns? A. Yes, there were.

Q. Did you see a crew putting on guy wires on any of the columns? A. Yes, I did.

Q. When, in relation to the accident, was it before or afterward? A. They started putting them on either two days after [79] we started erecting the steel. They had a crew come behind the razing gang and plumb it up.

Q. Were there guy wires on the column next to the one that fell? A. I do not recall.

Q. Well, knowing the business, Mr. Hubbell, when are columns ordinarily guyed? A. After they are erected, after you put them down.

Q. As a matter of procedure you put the column down and then the beam is attached and then you guy it? A.

That is correct. They generally guy it, the razing gang do not guy steel unless it is necessary.

Q. You just said they did guy it? A. Not in erection they do not.

Q. When did you see them guy it? Did you say you saw them? A. They had another crew come in a couple of days after we started erecting it and putting cables on.

Q. You mean the same steel people, structural steel people did this? A. That is correct.

Q. You say they guy it when necessary. When is it necessary? A. Well, when you erect structural steel, you do not [80] put guy cables on it because you have to have give in it in order to make it up.

Q. What does that mean? A. You have got to have give in it one way or the other to make up steel beams and stuff. You just do not put guy wires on it and pull it tight.

Q. You mean the column has to be somewhat loose? A. That is right.

Q. You could adjust it? A. Well, if you have to move it, you go over there and slack those anchor bolts off that hold it down.

Q. Who does that, the structural steel people? A. That is right.

Q. So they can loosen those bolts and move that column so they can adjust the beam? A. If it is necessary to move a beam, yes.

MR. MAHONEY: That is all.

BY MR. GIONFRIDDO:

Q. Mr. Hubbell, did you see anyone secure this particular column after you set it in place this day? A. I was looking right at it.

Q. Who secured it, do you recall? A. Two iron workers. One of them was Snavely and the [81] other one was. I don't even think he is living now. I think he was killed in an accident.

Q. Do you recall whether they secured them down tightly? A. They always do.

THE COURT: Do you know whether they did this time?

THE WITNESS: Yes, sir. I was looking right at it.
BY MR. GIONFRIDDO:

Q. They secured them as tight as they do them up? A. That is correct.

Q. This piece of concrete that you saw, this column that we were talking about, rests on a wall. This was on the first floor of the building, was it not? There was a basement level beneath it? A. That is right.

Q. So there was a concrete wall and there was an alabaster column in that concrete wall? A. With two anchor bolts in it.

Q. And you dropped this column on top of that? A. Set it down on the anchor bolts and put nuts on top of them.

Q. You said the column fell towards you, which would be in a southerly direction? A. That is correct.

[82] Q. The piece of concrete that broke, was that on the South side or the North side? A. It was on the South side.

Q. In the direction that it fell? A. That is right.

Q. You say about 8 or 10 inches. Are you talking about length or depth? A. Depth.

Q. From top to bottom? A. That is right.

Q. But it was wedged? A. That is right.

Q. So the bottom of the ten inches came to a point and there was nothing? A. It was wide at the top and narrow at the bottom.

Q. A thickness at the top—how wide would you say that was? A. You could see the impression of the anchor bolt in the concrete.

Q. In the piece of concrete that fell off? A. That was still remaining.

Q. How thick was that concrete at the top of the piece that broke off? [83] A. I don't know. I never measured it.

Q. Can you give us an indication? A. I would not want to give you an indication if I did not know how thick it was.

Q. You knew if it was 8 or 10 inches? A. The piece that broke?

Q. How thick was it at the top? A. The piece remaining?

Q. The piece that broke off was about 10 inches at the top? A. That was probably three inches thick.

Q. How long? A. About 8 to 10 inches long.

Q. That is, across the top? A. Across the top? No, it was not that wide at the top.

Q. About how wide was it at the top? A. I would say six inches wide.

Q. So it's about 3 inches thick and wedges down to eight or ten inches? A. That is right.

REDIRECT EXAMINATION

BY MR. KOONZ:

Q. To your knowledge, did anybody loosen the anchor bolts on the steel on this day? [84] A. No, they did not, not when Mr. Williams fell.

* * *

[85] TESTIMONY OF JOHN SNAVELY

DIRECT EXAMINATION

BY MR. KOONZ:

Q. Would you state your full name? A. John Snavely.

Q. Would you tell us your trade? A. I am an iron worker.

Q. For how long have you been engaged in the trade of an iron worker? A. Since 1955.

Q. What do you do as an iron worker; in other words, what is your function or trade? A. Erecting steel.

Q. Are you here at my request? A. Yes, I am.

Q. Were you present at the time Mr. Williams was hurt? A. Yes, I was.

Q. Do you recall that job site? Do you recall where it was? [86] A. At a store out in Lanham, Route 450.

Q. On that day, what was being done by the iron workers, what work was being done? A. Erecting steel.

Q. Were you working with Mr. Williams on the crew? A. Yes, I was.

Q. When you arrived at work that morning and began your work day, what had to be done? A. Setting columns, erecting steel beams, setting beams, setting joists.

Q. Now where were you working at the time Mr. Williams fell? A. I was working on top of the steel beam.

Q. Where was Mr. Williams as you recall? A. He was out in the middle of the bar joists.

Q. How long have you been on this particular job, Mr. Snively? A. I guess about a week before.

Q. Had you been putting up steel right through? A. Yes.

Q. Was there steel being erected in the usual practice of steel erection? A. Yes, it was.

[87] Q. How do you go about doing that? A. Set a column, set a beam, put the joist on.

Q. Now when this accident occurred, what happened to you? You were right next or pretty close to Mr. Williams, were you not? A. I got off the part that was falling.

Q. You jumped or got out of the way? A. Yes.

Q. Were you at the accident scene? Did you stay there on the scene after Mr. Williams was taken to the hospital?

A. No, I went along to the hospital with Mr. Williams.

Q. Did you come back then? A. Yes.

Q. Did you have an opportunity to view what happened? A. Yes. Concrete broke.

Q. Did you have an opportunity to physically go down or go to where the concrete broke and observe it? A. Yes, I did.

Q. Can you tell us how much concrete on this column broke away, if you recall? A. Eight to ten inches.

Q. When you observed this concrete, can you give us a [88] rough estimate of how big a chunk or pieces that did break away? A. By nine to ten inches deep, sort of wedge-shaped. It was about five-inches at the top or something like that.

Q. When you looked at this concrete, were you able to see any steel reinforcing rods of any kind? A. No, I was not.

Q. Was there any steel showing through the concrete?

A. No.

MR. KOONZ: That is all.

CROSS EXAMINATION

BY MR. MAHONEY:

Q. At the time of the accident of Mr. Williams, you were on top of a beam? A. That is right.

Q. Was the beam next to the joist on which Mr. Williams was sitting? A. Yes, it was.

Q. How many iron workers were on top of the steel? A. Right there there were three of us.

Q. Were you fairly close together? A. Not too close. Mr. Williams was in the middle of the bar joist and I was on one side and the other fellow [89] was on the other side.

Q. You were on the beam, not a joist? A. That is right.

Q. Was someone also up there? A. Yes.

Q. Do you remember the name of that person? A. Yes. Sherman Clark.

Q. He is still employed by Kenmar Steel? A. No, he had an accident on a motorcycle.

Q. Now, were you moving around up there just before the accident happened, walking around? A. No, I was not. I was waiting on the joist to come up and set it in place.

Q. How did you get up to the beam? Did you climb up? A. Yes.

Q. Shimmy up it? A. Yes.

Q. You said you were securing the beam to the column?

A. The beam was already secured to the column.

Q. When it is erected it is? A. When we erect this beam to the column. It was there 15 minutes before it fell.

[90] Q. You mean the column and beam were attached 15 minutes before the column fell? A. That is right.

Q. What were you doing up there during that period? A. Sitting there waiting for bar joists.

Q. How far away were you from Mr. Williams when he fell? A. Twenty feet.

Q. Did you see the steel fall away? A. Yes, I did.

Q. In which direction did it go? A. On the outside of the building.

Q. Did the column fall first? A. The column started falling first, yes.

Q. Did that pull the beam with it? A. Yes, sir, it did.

Q. When it pulled the beam with it, did the joist then fall straight down? A. That is right.

Q. Did this column go south, straight down south across the building? A. It went on the outside of the building.

Q. And went straight out? [91] A. Yes.

Q. Pulling the beam with it? A. That is right.

Q. As it did, did it wrench a piece of concrete? A. Yes, it did.

Q. Did it wrench out the concrete or bolts in there too? A. Yes.

Q. Did you go down and look to see this chunk of concrete that was pulled out? A. I seen that chunk of concrete pulled out.

Q. This was concrete and steel attached to the base plate? A. It was attached to the bolts.

Q. The concrete was still attached to the bolt? A. Yes.

Q. Were the bolts elongated? A. They had a hook on the end.

Q. I am trying to find out what you saw? A. The bolts were still attached to the column but there was no steel on the hunk of concrete. It still had the hooks in the bolt.

Q. From what you observed, the nut was around the base plate? [92] A. That is right.

Q. The nut was still on, and the anchor bolt was there and the concrete was around the anchor bolt? A. That is right.

MR. MAHONEY: I have no further questions.

BY MR. GIONFRIDDO:

Q. If I understand correctly, looking down at the top of the concrete there is a base plate that fits on first? A. Right.

Q. This base plate has a couple of holes in it? A. That is right.

Q. Those holes are placed over the anchor bolt that come up? A. Right.

Q. And then when the column is set on that you set even down the nuts on those anchor bolts? A. Right.

Q. From what you told Mr. Mahoney then, this whole column fell outside the building, the concrete you saw was attached to the bottom of this base plate around here (indicating)? A. No, I do not know if it was attached to the base plate or to the bolt.

Q. The concrete was that that came out under the base [93] plate? A. Right.

Q. In the center of this column? A. Right.

Q. It was not something that came away on the side here. It was that center section right under the base plate itself? A. No. The outside of the wall had broke off too.

Q. Part of the wall was torn away too? A. Yes.

Q. Was that still attached to the anchor bolt too? A. I do not know if that particular piece was still attached to the anchor bolt or not.

Q. Where did you see this piece that came from the outside of the wall? A. Your plaster wall was still there. There was a big piece that came off the outside too.

Q. Can you describe it? A. It was eight or 10 inches long or deep.

Q. Eight or ten inches across? A. Down.

Q. Was it a wedge? A. Something like a wedge piece.

Q. How thick would it have been at the top? [94] A. Four or five inches.

Q. Four or five inches across here? A. Yes.

Q. Would that have gone the whole way up under where the base plate was? A. Yes.

Q. Would it have gone the whole way up to where the anchor bolt was? A. It could have been bigger. The concrete was around the anchor bolt. He could see the hooks sticking out. It broke off the outside of the pier.

Q. This outside piece was ten inches across? A. Yes.

Q. And 20 or 8 and 10 inches— A. Eight or ten inches down or something like that.

THE COURT: When you say broke off the outside pier, what do you mean?

THE WITNESS: Where the pier comes up.

THE COURT: By pier, you mean the column?

THE WITNESS: Yes, the column.

BY MR. GIONFRIDDO:

Q. It was broken off on the outside of that wall up here in the direction that the column fell, is that right? [95] A. Yes.

MR. GIONFRIDDO: That is all.

REDIRECT EXAMINATION

BY MR. KOONZ:

Q. You know what an anchor bolt is? This is an anchor bolt? A. Yes.

Q. Was concrete attached to this? A. Yes.

Q. Was there more concrete that had fallen or was the whole piece attached? A. This I really did not notice.

Q. Are you familiar with the reinforced rod? A. I have seen them, yes.

Q. Can you identify this? A. That is a reinforced rod.

Q. Is this a reinforced rod? A. Yes.

Q. Did you see anything that looked like this? A. No.

Q. Did you see anything that looked like this? A. No.

MR. KOONZ: I have no further questions.

* * *

[98] TESTIMONY OF JOHN TOOMEY

DIRECT EXAMINATION

[98] BY MR. KOONZ:

Q. Would you state your name? A. John Toomey.

Q. By whom are you employed? A. Value Engineering Company.

Q. What is your position? A. President.

Q. Where is the company located? A. Alexandria, Virginia.

Q. How many employees does the company have? A. 265.

Q. What is one of the functions or the function or the purpose of your company? A. We are a consulting engineering firm. We have a materials and evaluation and structural evaluation lab.

Q. What is your background, Mr. Toomey? Do you have a degree? [99] A. I have a MS and BS in mechanical engineering and I am a registered mechanical engineer with the District of Columbia.

Q. Do you have experience and training in structural engineering? A. Structural engineering and stress analysis.

Q. Can you just give me some of your background or include in your testimony what stress analysis entails? A. Stress analysis is an engineering science of the determining of the ability of material to withstand load.

Q. Mr. Toomey, at my request did you review personally with the architect the plans or some of the specifications or drawings on a certain construction project called the Super Giant out in the Glenridge Shopping Center in Maryland? A. I did.

MR. KOONZ: Is there any question as to his qualifications?

MR. MAHONEY: No.

BY MR. KOONZ:

Q. Mr. Toomey, would you come here and with the use of this exhibit locate for us concrete column number E-14?

A. These columns are numbered from left to right, one through sixteen, and they are numbered from the back of the building to the front of the building and are lettered A through E, E being the front and 4 being the second and third one from [100] the end of the column.

Q. Did you determine or have you been told that an accident occurred involving this particular column? A. Yes.

Q. Did you discuss the particular column involved with the architect? A. I did.

Q. Did you determine, Mr. Toomey, what the drawings required as far as the height of the concrete column itself was concerned?

* * *

BY MR. KOONZ:

Q. My question, Mr. Toomey, will you tell us from the drawings that you have before you what the specified height of this E-14 column was? A. This is approximately 15 feet.

Q. Can you tell us from the drawing what the specified requirements for the reinforcing rods inside this column was?

A. The drawing specifies that to be a four number eight [101] rods. Let me clarify what I said just a minute ago. This is a two-story building. The first story is something like a basement, is a concrete reinforced column and that is 15 feet, and on top of that there is an additional steel column.

Q. Now, did you recently go out to the scene, to the building itself and observe it? Have you been out to the Super Giant? A. Yes, sir.

Q. On this E-14 concrete column what in fact is resting on top of that? A. Well, there is an I beam, which is anchored to the concrete by anchor bolts, anchored to the concrete column. In other words, the steel column is anchored to the concrete column with two anchor bolts.

Q. What do these drawings require with regard to height, the reinforcing rods, these four number eight reinforcing rods as it pertains to the concrete cover or the cement deck?

A. The drawings specify that the four number eight reinforcing rods be within an inch and a half at the top. The rods are one and a half inches shorter than the column in length.

Q. Mr. Toomey, can you identify this? A. Yes, that is a reinforcing rod.

Q. Is that a number eight rod? A. Yes.

[102] Q. Is this the type of rod that these specifications or drawings call for to be placed in this column? A. That is correct, four rods close to the corners of the square column.

Q. By using this rod can you with your hand indicate how far above this rod concrete would be? A. This should come within about an inch and a half of the top of the column.

Q. So that an inch and a half below the concrete there would be reinforcing rods? A. Approximately.

Q. Or four of them? A. Yes.

Q. Mr. Toomey, you have indicated that you have training and experience in stress, material stress. Are you familiar, sir, with what takes place when steel is erected on a building or construction project? A. Yes, sir.

Q. Can you tell us from your experience how steel is normally erected and what is the practice in this area of erection of steel? A. Well, as related to this particular situation, it's normal to put up of course the first floor first and to put up the second steel for the second floor subsequently. And in putting up the second floor, why the process in putting up the [103] steel, why it is not fully secured during the process, obviously it takes time to get all the joints secured. So that there is a period of time when the structure is not as strong as it will be when it is completed.

Q. In light of this fact, is there stress on the concrete columns, for example, that are supporting the steel? A. That is right.

Q. During construction I mean is there stress. A. That is right. There are stresses on the concrete columns.

Q. What is there and what do these plans call for that should provide for this stress or this strain in the concrete itself? A. In the concrete itself there are of course two elements. There is the concrete which is a very good material in compression. There is in the concrete steel rods which makes up for the weakness of the concrete in tension.

Q. What do you mean? I am not familiar with that. As far as compression is concerned, what are you talking about?

A. Compression is the ability to do this (indicating) like a rope that has no compressionability. It is very good at tension. You can pull it. But you cannot push it together. You cannot use it in compression. Whereas dirt or sand is very good in compression. You can drive a heavy vehicle over sand without a failure of the sand, but you cannot use it in [104] tension. It just pulls apart. So concrete is in the category of having a very weak tensile capability. The

steel has a good tensile capability and the mixture of the two provide the ability to resist both.

Q. What is the function of the reinforcing rod? A. The reinforcing rod holds the structure together in tension.

Q. Now, does this come into play while the steel is being erected? Is there tension on this concrete while the steel is being erected? A. There is substantial tension possible in the concrete during erection. As you might imagine long columns, steel columns on the top of this concrete structure secure it by two anchor bolts at the bottom.

Q. Let me show you this. It has been admitted as Plaintiff Exhibit No. 7. What is this, sir? A. It is an anchor bolt.

Q. What part does this play as far as you are concerned? A. This is the bolt that is imbedded in the concrete to prevent the column from moving.

Q. And what as far as the reinforcing rods are concerned, what do they play or where are they with regard to this anchor bolt?

* * *

[105] BY MR. KOONZ:

Q. During the recess you were kind enough to draw some diagrams on the board. Will you go to the board and identify each of the items you have sketched for us? A. I think we have exhibits that can be associated with the drawings. This is an anchor bolt right here. The purpose of the anchor bolt is to secure the vertical steel column to the concrete column. There is concrete from here down. This [106] is the steel I beam from here up.

Q. Just so we will be clear, this represents the steel beam? A. That is right.

Q. And is this what view of this whole operation? A. This is one side and this is rotated 90 degrees looking in from this side.

Q. Can you identify for the ladies and gentlemen of the jury and His Honor these objects? A. Those are the reinforcing bars set in like that. They have bumps on them so the concrete can grab it sufficiently to hold it together.

Q. Can you indicate for us in this instance between the top of the rods and the concrete? A. According to the drawings this distance from here to here (indicating) should be one and a half inches.

Q. Now explain, if you will, this view that you have indicated. A. This view (indicating) is the view looking down and this is the I beam. Notice it is the shape of an I over on its side. This is a steel column. You notice this particular line is from here to here (indicating) and this particular line from here to here. And we are looking in this way and we see one anchor bolt and nut and directly behind it is another one, which of course does not show because it is directly behind [107] this one.

Q. What are these four dots? A. These four dots are the reinforcing bars that are located approximately an inch and a half in from the corners.

Q. Now, you have indicated twice, Mr. Toomey, an inch and a half. Is this what the drawings have called for? A. This is what the drawings specify as an inch and a half in here.

Q. An inch and a half of what, so that we are clear. What does the inch and a half signify? A. If you were to move an inch and a half of concrete away from there you would see an anchor bar.

Q. You are talking about the reinforcing rod? A. Yes, reinforcing rod at this point, yes.

Q. Now, will you return to the stand, please, Mr. Toomey? A. Yes.

Q. Or wait, while you are here, when steel is erected and there is some movement of this column, what is happening then right here in the concrete column itself? A. This column from here up is approximately 20 feet, and has a very slight movement at the end of that 20 feet and has a tendency to pull this anchor bolt out. It is kind of a big claw [108] hammer. It has a tendency to lift that with this one up. Of course the concrete and the reinforcing

bars, if they are strong enough, should resist that.

Q. What function are these four reinforcing rods that are from this distance up, serving? A. These reinforcing bars provide the tensile strength to the concrete column which without the reinforcing bars, the concrete is not considered very strong in tension. It is just not used as a tensile material. Reinforcing bars provide all the tensile strength for the concrete. For capsulation purposes, when measuring, you measure the tensile strength in the tension and you just use the tensile strength of the steel.

Q. Just assume that for this distance, for 8 to 10 inches down, approximately the depth of the anchor bolt, there are no reinforcing rods in this concrete column. What then is the effect if there is movement of the steel, what is the effect on the concrete in this area surrounding the anchor bolts? A. You have the same effect as you have when you pull a nail out with a claw hammer. You exhibit a force in this direction on the anchor bolt. The anchor bolt would grab the concrete here because it has this hook on it, and has a tendency to crack across here.

Q. What would crack? A. The concrete would fail right across there. If the [109] bars are there, of course that would not happen.

Q. Mr. Toomey, assuming that on a particular day at this particular job site during this construction process, iron workers were engaged in erecting steel. Assume further that one of them was helping to hang bar joists. Another was on the other end of the bar joist and a third one, in this case Mr. Williams, was seated in the middle of the 20-foot bar joist beginning to weld and bridge, or do bridging as it is called.

Assuming there is normal movement of these men on the steel, during the course of its erection, and assuming further that there are no reinforcing rods, there are no reinforcing rods that come up as required by the specifications to within one inch and a half of the concrete; assuming further that they are not any higher than 8 to 10 inches from the concrete; assuming further that the column begins to fall, the concrete breaks away and the column falls, what part

does the lack of these reinforcing rods, what part would the lack of these reinforcing rods play in the falling of that steel?

A. They would negate the effect of and the intent of the anchor bolt. It would be comparable to having the anchor bolt in sand. It would just lift it right out.

Q. If the reinforcing rods were where they should have been, that is, if they had the full extent of their height up to one and a half inches from the concrete, and there was normal sway or movement of that steel, what then would the [110] effect have been on the steel? A. It would be significantly stronger if the reinforcing bars are as they should be. Obviously it would be because that is the purpose of them.

MR. KOONZ: That is all I have.

CROSS EXAMINATION

BY MR. MAHONEY:

Q. Mr. Toomey, is there anything in the plans and specifications which direct that the anchor bolts be tied or secured in some manner to the reinforcing rods? A. I did not see anything that tied it directly to the reinforcing rods.

Q. I am referring specifically to E-14, the one that you depicted. A. Right. There is some wire that is used during construction to hold these various things in place that could very well be attached to the anchor bolt.

Q. What kind of wire? A. This is small wire—

Q. Tie wire? A. Tie wire.

Q. The anchor bolt as shown in this diagram is what is required in the plans and specifications, is that correct, for E-14? A. That is right.

[111] Q. In other words, what is required is that two anchor bolts be placed in the base plane with a distance shown here which is 13 inches down and 3 bend with 4 inches above and that the rods are placed in this direction? A. Right. I think it is not quite 13 inches down, somewhat less than that.

Q. It is an 18 inch anchor bolt with a 3 inch bend and it is 4 inches above—it would be approximately that? A. Yes.

Q. And nothing else in the plans is required as far as these anchor bolts are concerned? A. That is right.

MR. MAHONEY: That is all.

CROSS EXAMINATION

BY MR. GIONFRIDDO:

Q. Mr. Toomey, you have here the top view looking down and this would be the side view, a cross section. Now, these are different sizes than they are here. For the sake of clarity, let me do this, and reconstruct your top view.

THE COURT: We will understand it is not drawn to scale. Mark on the side what is drawn.

THE WITNESS: I think it is misleading to put them quite that close to the edge.

BY MR. GIONFRIDDO:

Q. One of the purposes of covering steel rods or any [112] steel in concrete when it is along an outside wall or exposed to weather is to keep the weather from getting to it. This is one of the reasons, to keep moisture from getting to it. This is one of the reasons an architect would specify an inch and a half as opposed to three inches? A. Yes, sir.

Q. You said you went out and visited this building. When was that? A. Yesterday.

Q. So the building is standing now, is it not? A. That is right.

Q. You could not see the location of any particular anchor bolt or any particular rod? A. No.

Q. The beam was up and the walls were in and everything? A. That is right.

Q. You stated that concrete itself has no tensile strength at all? A. It is very limited tensile strength. In calculating its structural uses we do not use any.

Q. Right. In other words, if you had a piece of metal and you put force on it, it would stretch like taffy until it broke? A. That is right.

Q. But when you put force on concrete, it is not going to stretch. [113] It is going to break. When you answered Mr. Koontz's question, his hypothetical question about three

men on the superstructure on the beams and joists that are above this column, and you talked about normal movement of three men now, let me ask you this: Assuming the same facts that you assumed for Mr. Koonz, assuming one other fact that this column is out of plumb, leaning to the outside, if enough weight or enough force is applied laterally to that column at the top, whatever that amount might be, if sufficient force is applied, is it not going to have the same effect of this claw hammer and cause the failure of the concrete and the pulling of these rods in spite of location of these?

A. It is going to have the same force but the ability of the concrete to resist this will be different. The load will be the same. But the ability to resist these loads is what will change by not having the reinforcing rods.

Q. I understand that, Mr. Toomey. My question is: If sufficient force is applied, it is possible that the concrete will fail, if sufficient force is applied?

THE COURT: Possible will not help the jury, sir. You can ask if he has an opinion.

BY MR. GIONFRIDDO:

Q. Do you have an opinion, Mr. Toomey, as to whether or not even when the rods are properly located, do you have an opinion whether or not sufficient force at the top of that [114] column could still cause the concrete to fall?

THE COURT: Meaning by that three men.

MR. GIONFRIDDO: Yes.

THE WITNESS: You find if that concrete were sufficiently strong as it should have been that the anchor bolt would then be possibly the weakest member and it would have a tendency to stretch and you would see some deformation in the anchor bolt.

BY MR. GIONFRIDDO:

Q. It would shear? A. It would fail in tension.

Q. You mean stretch? A. It would stretch, yes.

Q. Beyond its point of stretch it breaks? A. That is right.

Q. You would have two pieces? A. Very likely.

Q. But do I understand you correctly your testimony is

that no amount of force at the top of this column would cause that concrete to fail? It would first cause the anchor bolt to fail? A. I have not run that particular calculation. However, we are talking about a hypothetical case now. The steel is one inch in diameter and there is two of them.

Q. Which two? [115] A. The reinforcing rod.

Q. There is four of them. A. Four of them—oh, any one side is in tension. One is in compression and the other side in tension. There are two rods approximately one inch in diameter. There is one anchor bolt that is of a lesser diameter and if that anchor were surely fixed in the concrete, it would not be as strong as those two reinforcing rods.

Q. I understand that. My question is simply this: Could enough force be applied to the top of that column to cause that concrete to fail even with the rods in it?

MR. KOONZ: I object to that.

THE WITNESS: I cannot answer it right offhand. I say it could not do that without showing some very serious effects on the anchor bolt.

BY MR. GIONFRIDDO:

Q. If it did show serious effects on the anchor bolt? A. It would break the anchor bolt most likely.

Q. Now, you used two terms here when you were describing that we have four rods and you used two terms referring to the force or type of force that would be applied to the two sides of this with the two rods. What are those terms again? A. Compression and tension.

Q. Now, assuming that this line extended represents the outside of the building in which this column stood and assuming [116] further that when this column fell it fell to the outside of the building, on which side of this column would the compression and on which side of this column would the tensile force be applied? A. The tensile would be on the inside of the building.

Q. Up here (indicating)? A. Yes.

Q. So when it failed because of lack of tensile strength it would fail on the inside of the building, not on the outside? A. If the other factors were correct, that is true.

MR. GIONFRIDDO: That is all.

REDIRECT EXAMINATION

BY MR. KOONZ:

Q. Mr. Toomey, I have a pencil. Just so we all might be clear, with that pencil would you demonstrate for us compression and tensile strength? A. I think if anyone tried to break a pencil with compression it would be very strong. If you tried to pull it apart it would be approximately the same because this particular material is strong in both directions. However, concrete is different. It is strong in compression but not in tension. When you push on it like this, like a tall column would be and after a lot of leverage at the top of it, there is exerted through the entire length of it and particularly at the bottom a compression on one side and a tension on the other, and it is [117] like bending it and does that (indicating). The inside of this is compression and this is tension (indicating). It fails in tension.

MR. KOONZ: Thank you.

THE COURT: Is there anything further, gentlemen? Then the witness is excused.

(Witness excused.)

(Mrs. Linney Williams testified.)

MR. KOONZ: That concludes the plaintiff's presentation of this case.

MR. MAHONEY: May we approach the bench. Your Honor?

THE COURT: Yes, sir.

(At the bench.)

MR. MAHONEY: If Your Honor please, on behalf of the defendant, Moses-Ecco Company, Incorporated, I would like to move for a directed verdict at this time. I request the motion be heard out of the presence of the jury.

MR. GIONFRIDDO: A similar motion is made on behalf of Ray Gains, Incorporated.

(In open court.)

THE COURT: Ladies and gentlemen, we will temporarily excuse you while we take up a matter that does not concern you. You have the same admonition before you.

(The jury was excused.)

MR. MAHONEY: May it please the Court, the defendant, [118] Moses-Ecco Company, Incorporated, moves the Court for a directed verdict in its favor on the grounds that the plaintiff has failed to make out a prima facie case of negligence against it.

(Argument followed.)

MR. GIONFRIDDO: Your Honor, I too at this time would move for a directed verdict on behalf of the defendant, Ray Gains, Incorporated.

(Argument followed.)

THE COURT: I am going to deny the motion. But I have a lot of questions about this, Mr. Koonz. I will deny the motion, gentlemen, at this time. I would like to have a better look at the evidence than I have in my limited notes.

(The jury returned.)

THE COURT: Are you ready to proceed?

MR. MAHONEY: I call Mr. Alexis Smislova.
Whereupon,

ALEXIS SMISLOVA

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MAHONEY:

Q. State your full name, sir? A. Alexis Smislova.

Q. What is your occupation? A. I am a structural engineer.

[119] Q. Would you tell us briefly of your background?

A. I graduated with a Bachelor of Science Degree in 1943 from Robert College. I have a Master's Degree that I received in 1951 from Lehigh University. I have been in practice since 1961, having my own office. I am a member of the Consulting Engineers Council. I am a member of the American Society of Civil Engineers and I am registered in Washington, D. C., Maryland, Virginia and Pennsylvania.

Q. Mr. Smislova, what did you have to do with the construction of the Glenridge Shopping Center? A. I was the structural engineer that designed the center.

Q. Hand you what has been marked as -

THE COURT: Excuse me. You said you were the structural engineer?

THE WITNESS: I prepared the structural plans for the shopping center.

BY MR. MAHONEY:

Q. I show you what has been marked Joint Exhibit No. 1 for identification and I ask you, sir, are these your plans?

A. Yes, sir.

Q. These plans were prepared by you or under your supervision? A. With the exception of these which are shop drawings.

Q. Shop drawings? [120] A. Yes, sir. The rolled set of plans are my plans.

Q. Looking specifically, if you would, at plans calling for Column E-14, which is the column in question- A. Yes, sir.

Q. There are specifications of plans there for insertion into the concrete of an anchor bolt? A. Yes, sir.

Q. How many anchor bolts are required to conform with the plans? A. Two.

Q. How are they to be inserted into the concrete? A. They are to be on either side of what we call the web or the column. If this is a wide flange column, this is the web and the two flanges are here and they would be on both sides of the web.

Q. How are they secured into the cement? A. Just through the bond of the concrete and the steel and the mechanical adherence due to the bend of the three inches.

Q. How are these bolts secured to the concrete? A. Through the bond of the concrete and the anchor bolt. This is how they would be secured.

Q. In those plans do you direct the anchor bolts be attached by any manner to the reinforcing steel? A. No, sir.

Q. This building was for the Giant Food, sir? [121] A. Yes, sir.

Q. How many buildings have you put up with Giant

Food? A. In the past several years about maybe roughly 23.

Q. You are familiar, Mr. Smislova, with the structural steel on that project or designed for that project, is that correct? A. Yes.

Q. When a column is erected—and we will use these specific columns here, E-14, one set is placed down by the crane, sir. Before any bar joists or beams are welded should that column be plumb? A. Reasonably so, yes.

Q. How do you do this? A. Well, usually the best way to do it.

MR. KOONZ: I object. Are you asking how it is done or what is the practice?

BY MR. MAHONEY:

Q. What is the practice?

THE COURT: You say it must be reasonably plumbed?

BY MR. MAHONEY:

Q. How do you plumb the column? A. Usually what you do is at the column when you have just one column standing up, you make sure the anchor bolts are tightened at the base plate and this I do not remember if I may consult the plans—whether we had yes, you prepare a [122] fairly reasonable level surface on the concrete. Then you come and place your steel column down, which is setting on a base plate and you have a bed of ground in this particular case and you tighten your anchor bolt. This should give you a fairly reasonable plumb column.

Q. If it is not plumb, what do you do first? A. If it is not plumb, you may use guy wires to achieve the same purposes.

Q. Is it important in the construction of steel, Mr. Smislova, to have the column plumb before any bar joists are welded? A. That is right.

Q. Why? A. It is important before you start welding and finalizing the connection of beams and joists and everything to have the assembly plumb because otherwise you make a rigid assembly because even by guy wires you could not achieve that result easily.

Q. Let us assume that E-14 was slightly out of plumb and at the top of it was affixed a beam which was bolted.

A. Yes.

Q. And bar joists were laid across to beams over a span of some 52 feet, and these bar joists were not welded at the ends to the beams. And then in this condition there were three men moving around normally on top of this structure. What kind [123] of stability does this structure have under those conditions? A. It is very unstable.

Q. When you say unstable, what precisely could happen?

A. I have walked on a lot joists during the course of my own practice inspecting different jobs, and I would never do any walking on joists unless I had some kind of plank or the bridging is installed because as you walk from joist to joist and there is nothing underneath you, the joists especially are not welded, and have a tendency to roll, because actually they are depending on the manufacturer—they may be two or three and a half inches wide at the ends where they set on the steel. They may be also setting on masonry. As you walk across, they have a tendency to be unstable. That is why we install bridging, because construction loads are on the joists. We do not depend on the bridging to distribute the load from joist to joist, but make it stable during construction.

Q. According to these particular plans how much of the joist was leaning on the beam? A. According to the plans which we called here in the structural notes here it says series on steel shall be two and a half inches.

THE COURT: Does that mean each end, sir?

THE WITNESS: Each end, yes. This is for S-series and four inches for L-series. And I believe these were L series, so they would be four inches.

BY MR. MAHONEY:

[124] Q. What do you mean by that, Mr. Smislova, using this diagram here, a rather poor representation of the column or the beam in a bar joist, number three being the bar joist? A. I am sorry, I cannot see from here.

THE COURT: You may move down, certainly.

BY MR. MAHONEY:

Q. This, representing a column, and number two, representing a beam, and number three, representing a bar joist. Now, is it the four inches that either end that you are talking about? A. May I redraw this? If this is the column in the relationship in which it would stand, this would be the beam and the joist would be like that. So we are talking about four inches right at this level.

Q. I understand that. A. If this is the flange of the beam, the joist would be setting four inches.

Q. So any movement four inches would drop that joist, is that correct? A. Yes.

Q. We assume neither end was welded. A. Right.

Q. What affect on the structure of the steel would the pressure against the top of the column have by the three men moving up on the joist? What I am referring to is the pressure [125] on the column that is out of plumb. A. Well, you will have an overbalance which will tend to make the column more to lean in the direction in which it is leaning, and if the pressure is not removed, probably the column eventually will fall down or lose its stability.

Q. If it falls, would it pull the cement with it, if it did?

A. Well, if it falls, several things may happen. If the anchor bolts are not tight against the base plate—

Q. Let me interrupt you a minute because we have testimony that when the column fell, and this is the column as to the edge of the building, it fell south or away from the building—the building itself running east and west—and with it came the beam to which it was attached. Now, with that would you go ahead and answer? A. Several things can happen. For one thing, as the column falls down, it is going to rotate around each base plate. In the process of course it will have a tendency to exert force on the nuts of the bolts. If the bolts are held in the concrete and the concrete holds them, what will happen if the pressure is large enough—then the bolts are going to neck down.

Q. What do you mean by “neck down”? A. By “necking down” I mean as you take a piece, a round piece of steel,

then apply enough tension let us say at [126] both ends to make it fail, before the piece separates in two portions, it narrows and necks down and then breaks in two.

Q. Would it be correct to say it elongates? A. It elongates at the same time. But as it elongates it changes cross section. The cross section gets smaller and smaller in the process.

Q. Do you know how much the column E-14 weighs?

A. I have a shop drawing here which shows the column and it is 10 W flange 39, which means it is 10 inches wide at the flange and the column weight is 39 pounds per foot. This is a 20-foot six-inch column. So it would be close to 1,000 pounds.

Q. Would the beam to which it was attached also weigh a thousand pounds or more? A. No, the beam that is attached to that column—there are two beams by the way that are attached to that particular column, and I do not know which beam you are referring to. There is the 18 wide flange 60. If this is north, it would be on the west side of the column, and another beam of 20 wide flange 102, which would be on the east side of the column.

Q. How much does each weigh? A. One weighs 60 pounds per foot and the other weighs 102 pounds per foot.

Q. What would be the total weight? A. The total weight would be—the sum total of the two beams would be about 7,000 pounds.

[127] Q. 7,000 pounds? A. Yes, sir.

Q. Now, if these beams are attached and the column is slightly out of plumb, what pressure would that weight exert on the base plate of that column? A. Well, a lot depends on how much out of plumb it is.

THE COURT: Assuming it is slightly out of plumb.

THE WITNESS: It would exert pressure that very well exceed the bearing capacity of the concrete. That would be for which we have designed the base plate. If I may explain for a moment here, the reason why we have a base plate to start with under a column is whatever the column carried is distributed within the allowable stress or carrying

capacity of the concrete. So if we call for 18 by 18 base plate, which is roughly about 324 square inches, we do not want to exceed 750 pounds per inch. This is how we arrive at the base plate size. So unless I make some computations and I know exactly what the eccentricity and deviation from the vertical was, it would be very difficult for me to say what the pressure might be. However, it is conceivable that it may exceed the allowable or pressure for which we designed the base plate.

Q. That being true, is it not vital that the column be plumb when men are working up on top of bar joists which are not welded to beams? A. Well, plumb or very closely to it. There is no such [128] thing as being exactly plumb. However, it should be close to it, very close to it. Otherwise, this is a sort of self-defeating type of thing. As you can see, if you have to start with a column out of plumb and you apply a load at the top of it, the load may remain constant, but once the column starts moving you get a bigger and bigger effort on the bottom and it is sort of a self-defeating system. It will rip out or fall down or neck down or whatever may happen.

MR. MAHONEY: Thank you.

THE COURT: Mr. Gionfriddo, you may proceed.

CROSS EXAMINATION

BY MR. GIONFRIDDO

Q. Mr. Smislova, extending just a little bit upon the last question. If this column is out of plumb and you have X pounds exerted at the top, do you have a formula by which you can tell us how those pounds are converted to force at the bottom? A. Yes. It is the vertical load multiplied by its distance to the bottom. If I can demonstrate it -

THE COURT: Let me ask you this, sir: Is this going to be any good to us without knowing what the slant is? To say slight would mean nothing. We want to try to get some help.

MR. GIONFRIDDO: We do have the weight of the beams at the top, Your Honor.

THE COURT: No, sir. What I am asking the expert is, without knowing what is meant by slight, are you able to compute? [129]

THE WITNESS: No, sir.

THE COURT: That is the question.

THE WITNESS: As a matter of fact, before I was going to point it out, unless he knows that distance, I cannot.

BY MR. GIONFRIDDO:

Q. But do I understand you correctly now, Mr. Smislova, that the force exerted at the bottom of the column when it is out of plumb is exceedingly greater than the force exerted at the top? A. That is right.

Q. As the column moves, the pressure or force at the bottom continues to build up? A. That is why I say it is a self-defeating system.

Q. Mr. Smislova, this diagram is not to scale. This was meant to represent a side view of the column upon which the steel column E-14 was sitting. This is to represent a view from the top. The I beam represents the column. The base plate with the anchor bolt and reinforcing rod within which your plans called for four number eight's? A. That is right.

Q. Now, going back again to E-14 being out of plumb and a pressure exerted at the top, you have told us already that these anchor bolts can elongate and sheer. What effect, if any, can this falling column and force exerted at the bottom of the concrete have around this area? [130] A. Well, as the column would move out—as Mr. Mahoney pointed out that it did fall out to the left I suppose—but it does not make any difference actually which way it falls. But the base plate being rigidly attached to the bottom of the column would then start moving with the column. Then the area which would come in contact with the concrete would get smaller and smaller, which means the intensity that was exerted at the bottom of the plate would increase, multiply itself to the extent that it may crush the concrete.

MR. GIONFRIDDO: That is all.

CROSS EXAMINATION

BY MR. KOONZ:

Q. Mr. Smislova, you are familiar with steel erection, are you not? A. Yes, sir.

Q. Now, I have just arrived on the job. I am an iron worker and all I see is a deck, a concrete deck, and I see anchor bolts sticking out of the concrete all over the place and I have to erect steel. Now, I first bring my crane to the job and I am going to set a corner column. I set this column and it already has a base plate attached to it or it is already in the concrete. In any event, I secure my anchor bolts. Is that a proper step? Is that the first step? A. No, because you have some ground that would have to be inserted between.

[131] Q. I am talking about the fact I am an iron worker. A. Therefore, you do not attach it directly to the concrete that is there. You actually tighten your bolts after you put the—

Q. I am trying to get the steps of erecting. I have set a column. What is the next thing I do? I have beams that go across. What do you do then? A. The next thing you do is you probably put a lean of beams that will go into this column.

Q. Then I have some bar joists and I have one span particularly long and any length of bar joist after X number of feet because of the nature of the joist probably bellies a bit in the middle. A. The joist does not belly.

Q. Will it have a little sway? A. Sway sideways, but it would not belly. I would hope not.

Q. Then I had better bridge it. A. The bridging comes after you have secured your joists in place, which means you have to weld at each end and then you bridge it.

Q. What is the practice now? A. That is the practice.

Q. You are telling me the practice is to weld before you bridge? [132] A. That is right, sir, because you see it is after you weld. Some of these joists as you may have pointed out yourself later become deformed because of the fact they are lying flat on the flange. So the bridging ac-

tion in addition to securing the joists together to take the construction loads also brings the joists in line, but you do not do that until you have secured both ends.

Q. If I have to line up my bar joists, in other words, I am setting a bar joist, setting another one right after the other, if I weld each bar joist as I go, and when I come to bridge it, I may have to move that bar joist. A. No, sir, because your bridging comes all fabricated and should be close to the spacing that you have the joists because the spacing is shown on the shop drawings.

Q. But in order to stabilize that large expansion of bar joists so that I can work on it, should I not do something to secure it? A. No, sir. You see in one case you have a beam on which you walk and then you weld your joists, because what you are saying is if you were to bridge this first, you are making the bridging a primary member of your roof system, whereas your primary member is your joist. If for example for some reason or another the bridging is in error, and you were to move it out, you are making the spacing of that joist a function of that error.

* * *

[134] BY MR. KOONZ:

Q. You indicated you put the column up and the beam and the bar joists are placed? A. Yes, sir.

Q. Now, at this juncture has the steel been plumbed? A. Not in the sense in which I think you are saying. In other words, you are not putting any guys or anything like that at this juncture. No, it has been put up.

Q. So there is no guy line as such? A. No, sir.

Q. Now, you talked earlier or indicated earlier that as long as the steel is reasonably plumb, has been reasonably plumbed, in other words, it is fairly in the position it should be in, then it is all right to proceed with the erection of the steel? A. That is right.

Q. Now, I understand in your trade you are not a steel [135] erector? A. No, sir.

Q. In fact have you ever erected steel? A. No, sir.

Q. This is a job for or function of the iron workers or steel men on the job? A. That is right.

Q. From your drawings, Mr. Smislova, will you kindly get us once again Column E-14? A. Yes, sir.

Q. Can you tell us what length of number eight rod was required in this column? A. From my drawings I cannot say that.

Q. Can you tell me from anything you have before you? A. Oh, yes. I am looking now at the drawings prepared by Steico Steel. They were the supplies for the reinforcing bars. They prepared a schedule for Column E-14, length of bars 15 feet 3 inches.

Q. Can you tell us from what you have before you that has been entered in evidence, at what height on this particular column, E-14, the concrete should have been? A. From the drawings we have supplied the contractor with the concrete it should have been at 16½ inches below the first floor.

Q. How much concrete should there have been over the [136] top of the reinforcing rod? A. Normally we call for it to be covered by an inch and a half.

Q. If the concrete was broken away, this concrete column— A. If the concrete column broke?

Q. Assuming the concrete—let us assume we just have a concrete column and you have the rods you specify in that column. A. Right.

Q. Nothing else. Let us just take that column and a sledge hammer and break away a chunk of concrete eight inches down and off to the side, would not the reinforcing rod show through? A. If I understand you correctly, you are going to take a sledge hammer and hit that column about eight inches below and get—

MR. GIONFRIDDO: I object.

THE COURT: Suppose you put it on the evidence.

BY MR. KOONZ:

Q. Assuming, Mr. Smislova, that the column is erected as called for. You have the four number eight reinforcing rods. Concrete was poured around it and there is an inch and a half covering over the top of the rod. This is what your drawings call for, do they not? [137] A. Yes, sir.

Q. Assuming further there is a steel beam on this secured by anchor bolts — A. A steel column, right.

Q. Secured by anchor bolts and that steel column failed and in the process it teared out the anchor bolts and rips away concrete six to eight inches down the concrete column. Now, my question is, assuming that this occurred and assuming further that the rods were placed where your drawing required they be placed, reinforcing rods, should you be able to see the reinforcing rods?

MR. GIONFRIDDO: I object.

THE COURT: He is the expert. If he can say, I will let him answer.

MR. GIONFRIDDO: There is nothing in evidence to support that question.

MR. MAHONEY: The question, the way it was worded it was broken off eight inches down. What he did not supply the witness was the width of this chunk.

THE COURT: He will know best whether he can answer it or not.

THE WITNESS: Yes, I was going to say—

THE COURT: You are saying you cannot answer it then, is that right?

THE WITNESS: Provided that the chunk of concrete [138] that fell off, because I have an inch and a half covering the bars, so that that chunk is more than an inch and a half, you should see the bars, yes.

BY MR. KOONZ:

Q. Now, Mr. Smislova, one last question. Is the purpose of the reinforcing rods number eight to give strength to the concrete? A. Yes, basically.

MR. KOONZ: Thank you.

REDIRECT EXAMINATION

BY MR. MAHONEY:

Q. Mr. Smislova, if when the column falls, it tears a piece of concrete with it under the base plate not near the ends of this column, would you then be able to see if there was any reinforcing steel in that column? A. Well, if you

are talking about the area because as your sketch shows the bars are at the four corners.

Q. That is correct. A. Only an inch and a half from each base, so if you are talking about as the sketch shows of any concrete falling or tearing off underneath the base plate, you would not see them.

Q. So in order for you to see them, the break would have to be within an inch and a half from the edge of the column? [139] A. At least.

Q. Thank you.

Now, Mr. Smislova, what is the purpose of an anchor bolt? What function does it serve on the job? A. On this particular job we are discussing it was primarily to anchor the column during erection, because usually we consider for these one-story buildings, which this in effect is a one-story above grade, that you would not go to any other thing but this.

Q. Does it prevent lateral movement on the base plate? A. It would, yes.

Q. After the roof is put on, does the anchor bolt serve any function? A. No, sir.

Q. None whatsoever? A. It serves but not for the purpose for which it is designed.

Q. Mr. Smislova, had you planned or had you preferred that the anchor bolts in some way be tied to the reinforcing steel, would you have so indicated that in your plans and drawings? A. Definitely.

MR. MAHONEY: I have no further questions.

MR. GIONFRIDDO: I have no further questions.

RE CROSS EXAMINATION

[140] BY MR. KOONZ:

Q. Your primary concern when you were called on to design the structure such as this is to draw it so that someone who is to erect it can look at your drawings and follow the basic drawings to construct the building? A. Yes. If I may supplement it, it is not just a drawing. We compute as well as draw.

Q. You compute what hold, what strength this will take and that and so on? A. Yes.

Q. But you are not concerned what for example kind of concrete or masonry they may use that is not your function? A. Sometimes it is my function, yes.

Q. Are you familiar with the practice of erecting in the trade and I am talking about the reinforced rods, practice of erecting reinforced rods? A. I am familiar to the extent that I have to inspect it.

Q. Do you know what I mean when I say bracing a rod? A. Pardon me, sir?

Q. Do you know what I mean when I say bracing a reinforcing rod? A. No, I am not familiar with that.

Q. There has been testimony, Mr. Smislova, from a reinforcing rod man. Can you see this? It is quite small.

[141] A. No, I cannot see it.

THE COURT: You may go down, sir.

BY MR. KOONZ:

Q. This is a drawing that has been made during the course of the trial. This represents a column with reinforcing rods. These lines are steel bracings on the rods. A. They are ties.

Q. If I say ties rather than bracing, you know what I mean? A. Yes.

Q. Is it not a fact that you tie the rods when they are erected? A. Yes, of course. A column is not a column unless you have those tied.

Q. Very well. And these four number eight when they are being erected would have ties on them, would they not?

A. Well, it all depends. Some people just make it outside and drop the whole skeleton into the form. There would be ties, yes.

Q. But because your sketches do not call specifically for ties, you expected there would be ties, did you not? A. My sketches did not call for ties. However the shop drawings call for ties and I have to approve the shop drawings before the steel is erected.

Q. So then you in effect expected there would be ties [142] on the reinforcing rods? A. As a matter of fact, yes.

Q. Now, Mr. Smislova, will you tell us from your knowledge and experience in a column this size, keep it in mind

we have four number eight's up in the air, how far below the concrete would be the first tie? A. You mean the top of the concrete?

Q. Yes. A. Of course the ties cannot be higher than the end of the rod. So we are talking about an inch and a half first of all from the top. I would expect the first tie would be within an inch or an inch and a half from the top of the steel.

Q. Almost to the top of the rod? A. If this is what you call almost, yes.

Q. Can you identify this piece of metal? A. Well, this is a reinforcing rod. It looks like a number three rod.

Q. Was this used at the time, not this particular shape, but was this used for ties? A. Yes, sir. As a matter of fact, that is what is called for, number three.

Q. So that assuming this concrete as I mentioned before broke away, anywhere if these ties were around this steel and the concrete opens up, would you not expect to see a piece of metal such as this? [143] A. Provided the concrete did not break just in the first two and a half inches or so from the top.

Q. If it broke away any? A. Plus the ties would be around the four bars and would be in about an inch or so, and with a number three bar you would have an inch and an eighth from the face of the concrete.

Q. If this broke away, you could expect to see the ties? A. I could expect it.

Q. Very well. Now, when also anchor bolts are installed, is it not also a practice since there is a tie that goes around those four rods to wire or weld that anchor bolt to that tie?

A. No, sir.

Q. Can it be done? A. It can be done, but it's not a practice.

Q. You have the same thing I have? A. Yes, sir.

Q. This is an anchor bolt? A. That is right.

Q. How much of this anchor bolt is protruding above the concrete? A. Usually there are about three and a half inches and that is how it is detailed.

Q. What is holding this in place? A. The gripping action of the concrete around the anchor [144] bolt.

Q. Before the concrete is poured? A. Before it is poured usually they make tablets and drop them down and pour concrete and as the concrete sits up it takes hold of the anchor bolt.

Q. So that this is very important that this be straight up in the air? A. Yes, of course, because then by the same token your plate has to fit the holes in the base plate in order to fit the anchor bolt.

Q. To keep your steel as straight as possible? A. Yes.

Q. My question is: If I am installing this anchor bolt, what have I put on there, what should I put on there before the concrete is poured to keep it in place from moving around from the normal activity on the job so it will not end up this way? A. The general practice is to make a tablet. It is usually put across the framework and then these anchor bolts are dropped in.

Q. Is it metal? A. Usually it is wood.

Q. Is it not sometimes wire? Don't they sometimes wire it on? A. Wire on to what?

[145] Q. You can wire it on to number eight rods on the side? A. No, because the wire would be too flimsy.

Q. Then you pour concrete, you pour right over the template? A. On the side. It does not cover the whole thing. It can be a little plate, this big. You have a 14 by 18 column. You still have room to pour the column.

Q. Is this template covered with concrete when the job is finished? A. Usually yes, because you cannot pour the concrete that neatly, but you are supposed to take it off.

MR. KOONZ: I have no further questions.

CROSS EXAMINATION

BY MR. GIONFRIDDO:

Q. We are talking about two types of rods here. This is the vertical reinforcing rod, is it not? A. I do not know. May I see it, please?

Q. Number eight? A. Yes.

Q. That is the one that the specifications called for, vertically 15 feet, 3 inches? A. That is right.

Q. And is 3 8 inch rod a tie rod, is it not? A. That is correct.

Q. And this is the rod that goes around the column?
[146] A. That is right.

Q. Now, is the purpose of the vertical rod to give the concrete tensile strength, is that right? A. In the case of a column it adds to its compressive strength.

Q. And the tie, the purpose of the tie is also to add to its compressive strength, is that right? A. The purpose of the tie is to indirectly add to its compressive strength because if you left the four bars without ties, when the load is applied, it will bulge and not have the lateral stability to be able to absorb the load. Therefore, you tie them together so they would stay together and make it a column.

Q. Under compressive force, it would stand up? A. Yes.

Q. And on this type of a column? A. Yes.

Q. With a 25-foot steel column on top of it, when we are referring to compressive strength, we are talking about the ability of this portion to withstand the pressure coming down on it, are we not? A. Yes, sir.

MR. GIONFRIDDO: That is all.

MR. MAHONEY: That is all.

* * *

[147] MR. MAHONEY: I call Mr. Manning.
Whereupon.

V. J. MANNING

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MAHONEY:

Q. Would you please state your name? A. V. J. Manning.

Q. Where do you live? A. 4404 Morgal Street, Rockville, Maryland.

Q. For whom do you work? A. I work for Miller & Long.

Q. What type of work do you do? A. Concrete construction.

Q. For whom did you work in July of 1961? A. Moses-Ecco.

Q. Were you the foreman on the Glenridge Shopping Center area? A. Yes.

Q. Was that the foreman for Moses-Ecco, sir? A. Yes.

Q. Would you tell us what the job was that Moses-Ecco had with respect to the construction of that Giant Food Store? [148] A. They had the contract for the concrete work, the concrete construction.

Q. Does that contract include the installation of anchor bolts? A. Yes.

Q. How do you determine the size and placement of these anchor bolts? A. The information is included in the contract drawings.

Q. On this job, Mr. Manning, before you make a pour, you pour your column, is the area inspected? A. Yes, relative to reinforcing steel. You have a county inspector that you have to call and have him come out and look at the steel before you can pour.

Q. You are aware, sir, that Column E-14 fell on July 31, 1961, is that correct? A. Yes.

Q. You were there at that time? A. Yes.

Q. Now, Mr. Manning, before that area was poured underneath that column, was that site inspected? A. Yes.

Q. Was the steel inspected? A. The steel was inspected, yes.

Q. How was it inspected, in what manner? A. The steel was inspected according to the approved [149] contract drawings and an account was taken of the bars as indicated on that drawing. The drawing gives spacing and the inspector checks the spacing.

Q. He checks the steel against the drawing?

MR. KOONZ: If the Court please, so we will not get involved with this gentleman with what the inspector did—I ask the Court to caution counsel I have no objection to him testifying to what he knows happened, what he observed.

THE COURT: Did you see all this, sir?

THE WITNESS: Yes, sir. I usually went along.

THE COURT: Not usually. What we are interested in now, counsel is asking were you familiar with this column E-14, or did you see what was done by the inspector?

THE WITNESS: Yes.

BY MR. MAHONEY:

Q. When did you make the pour? When did you put in the concrete in relation to when it was inspected? A. It would be two or three days later and I do not remember exactly whether it was two or three.

Q. Did you make a pour on that job at any time before it was inspected? A. No, sir.

Q. Now, Mr. Manning, you were present when the structural steel people came on the job, is that so? A. Yes.

[150] Q. Were you also present when they were erecting the steel on the first floor level? A. Yes, I was.

Q. At any time, Mr. Manning, from the time that you observed the steel operation up until Mr. Williams fell, were any tie wires put on those outside columns? A. No, sir.

Q. Did you observe any of those columns out of plumb? A. Yes.

Q. How many?

MR. KOONZ: I object. If the Court please—

THE COURT: Restrict it to E-14.

BY MR. MAHONEY:

Q. I restrict the question, Mr. Manning, to the column that fell. Did you at any time observe that column out of plumb after it was placed down by the crane? A. Well, I cannot say that I remember that exact column, no.

Q. After the column had fallen, Mr. Manning, were you right in that general vicinity? A. I was on the floor when it happened.

Q. Did you have occasion to observe the condition of the anchor bolts that were in? A. Yes, they were sheered off.

Q. What do you mean by that? [151] A. They snapped where they had been bent off. One was elongated.

MR. MAHONEY: I have no further questions.

CROSS EXAMINATION

BY MR. KOONZ:

Q. Mr. Manning

THE COURT: May I interrupt you, sir? You said you saw the anchor bolts after the fall?

THE WITNESS: Yes.

THE COURT: Did you say they were sheered off?

THE WITNESS: Two bolts and they were both broken and they had been somewhat elongated before they snapped.

THE COURT: But both did snap?

THE WITNESS: Yes, sir.

BY MR. KOONZ:

Q. Did the concrete break away when this happened, Mr. Manning? A. On the outside face of the wall there was a small place where the plate was on the bottom of the column as the column went over that fell off.

Q. Would you come over to the board, please? With some chalk as best you recall what part of the column broke away, just mark it with a line. A. Well, I don't know what this is. I see where we are. The column fell in which direction?

[152] Q. You were there. A. That is not a drawing of the column.

Q. This is steel. A. Yes.

Q. This is concrete? A. Yes.

Q. This is an anchor bolt? A. Yes.

Q. These are reinforcing rods and this is concrete. A. Yes.

Q. Do you have the picture? A. Yes.

Q. When this steel fell, you are saying these anchor bolts sheered off, are you not? A. Yes.

Q. Did they stay in the concrete? A. Part of them did, yes.

Q. Which part? How much stayed in the concrete? A. I would say roughly about this much (indicating). There was an inch or two of bolt missing out of this concrete.

Q. Will you put your initials right here with that chalk?

THE COURT: Put on that anchor rod an inch and a

half or two inches below the plate?

THE WITNESS: Yes.

BY MR. KOONZ:

[153] Q. There were two anchor bolts. Did both of them end up this way? A. Yes.

Q. So this part of it was still in the concrete? A. Yes, part of it was still of it was still in the concrete.

Q. How much of the concrete broke away? A. I would say just roughly that there would have been a piece of concrete that broke off in this manner, roughly in this manner or it may have been roughly in that manner.

Q. So that this corner— A. If the column fell in this direction, this is the corner that fell off.

Q. But a corner— A. The outside of the edge of the building. You are looking at a continuous wall like that. You are not looking at this. It is like we would be on the board and the column laid out this way (indicating). This plate came down.

Q. Are you saying the column fell out toward the front of the building? A. I am saying it fell outside the building somewhat perpendicular to the building.

Q. If we were looking at the front of the building and the building has both sides like this— A. It would have fallen toward us.

[154] Q. Away from the building. Did you see the concrete after it fell? A. Yes.

Q. Did you see what it looked like? A. Yes.

Q. Did it come off in more than one piece? A. I do not remember.

Q. Was it a solid chunk? A. I would tend to think so. I cannot say. I believe that it fell off in probably just one or maybe two pieces. But I do not remember.

Q. You are telling us when the steel was down there was only an inch or two of anchor bolt sticking out from under this steel. Do you follow me, and the rest was still in the concrete? A. There was a part of the anchor bolt left in the concrete.

Q. Did you see the steel after it had fallen? A. The structural column?

Q. Yes. A. Oh, yes.

Q. Was the base plate still on it? A. The base plate—I do not remember.

Q. Well was any anchor bolt still attached to the steel column? A. That I cannot remember.

[155] Q. Mr. Manning, you are not very sure what was happening, are you? A. Yes, I am.

Q. You are positive that anchor bolt stayed in the concrete? A. We had to remove that piece of concrete to put new bolts in there and report that, and we also found the pieces. You asked me if they were in the column. I do not remember if they were in the column, but we did find the pieces of bolt.

THE COURT: When you say you found the pieces of bolt, do you mean the part that had been broken off, sir?

THE WITNESS: Yes.

BY MR. KOONZ:

Q. These could have been bracings, could they not? These could have been tie rods that you found? A. No. You are speaking about the ties?

Q. Yes. A. Like the column ties—no, no, that is an entirely different type of steel.

MR. KOONZ: Will you mark this for identification? (The matter referred to was marked Plaintiff's Exhibit Nos. 18 and 19 for identification.)

BY MR. KOONZ:

[156] Q. I show you now what has been marked Plaintiff Exhibit Nos. 18 and 19 for identification. I ask you to leave those in front of you.

You were the concrete foreman on this job, were you not? A. Yes.

Q. So you were familiar with the pours that took place on the job? A. Yes, sir.

Q. You knew what consistency the concrete had and so on? You knew what the specifications called for? A. I know what we were supposed to be receiving from our supplies.

Q. Did you see some pieces of concrete at the scene of the accident after the column fell? A. Yes.

Q. Take a look at these, if you will, Mr. Manning, and I ask you to tell me, if you can, by looking at this concrete if this will refresh your recollection as to whether or not this is the concrete that broke away from this column? A. I would have no idea.

Q. Do you recall whether there were pieces of this size or about this size? A. There could have been.

Q. Now, Mr. Manning, your crew had the function among [157] others of installing anchor bolts, did it not? A. Yes, sir.

Q. Which came first, the reinforcing rods or the anchor bolts? A. The reinforcing rods.

Q. So that when you went to set your anchor bolts these number eight rods in this E-14 column were already there, were they not? A. Yes.

Q. You have in front of you some exhibits. This we all should know by now is an anchor bolt, is it not? A. Yes.

Q. Will you hold that up for me, please? Would you tell us how you install this on a construction job? A. We would take a piece of board, bore two holes in it the size of this at the proper spacing as indicated on the drawings and just place it down in the concrete at the grade indicated.

Q. Now, as you say down in the concrete. You do not mean concrete. You are sinking this in wet concrete? A. Yes.

Q. So you are putting the rods in wet concrete? A. They can be installed either while the concrete is still wet or right before you pour the concrete.

Q. Are they not usually installed before you pour the [158] concrete, is that not the usual practice? A. Well, we have done both ways.

Q. How about this job? A. They were installed both ways on this job.

Q. Let us assume since we went both ways, let us assume that you are going to install that anchor bolt before the concrete is poured. How would you do it? A. It would amount to about the same thing except you put a block on each

side and then just take the board and rest it down on the block and then nail it in place and after you pour, you make a pour, you make a check on it to make sure it is all plumb and straight.

Q. This would be a block here? A. It would be a board.

Q. What would hold this from dropping through the rest of the board? A. The board would rest on the sides of the column or two pieces on the rest of the wall.

Q. What would prevent the rod from falling? A. The nut would be on it. You would stick it through the hole. You run a nut all the way down. You run the nut down and that puts the top of the bolt where you need it and then you set the template down so it would span between the two sides.

Q. Is this hanging freely from your assembly down? [159]

A. Yes.

Q. Does anything secure the bottom of this? Do you wire this onto anything? A. No.

Q. Is it not a practice oftentimes or most of the time to take wire and secure it to your ribbing or strapping or reinforcing rods if they were available? A. If the bolt were an extremely long bolt, as for an example three or four feet, but a bolt that length or say two feet long I would not think so.

Q. When you come on the job and you have been in the trade how long? A. I went to work for Moses in 1947. But I went to work in construction in 1930.

Q. In the past before this incident happened in July of 1961, have you had occasion to call attention to other contractors the fact they forgot to do something or this does not seem right or that does not seem right?

MR. MAHONEY: I object.

THE COURT: I do not think it will help here. What was your function on this job?

THE WITNESS: I was superintendent for Moses-Ecco and in charge of their operation. We were a subcontractor.

BY MR. KOONZ:

Q. When you went to make your pour, for example, if

you [160] came across a column with no rods in it, would you go ahead and pour anyway? You would stop the job, would you not? A. Yes.

Q. And you would call this to the attention of somebody, would you not? A. Yes.

Q. On this job, if you came along and found that the rods for example were not where they should be for you to pour, would you not stop and call this to somebody's attention? A. If it was a reinforcing rod I would have the rod foreman pull them back to where they should have been.

Q. But would you be on notice then that there was something wrong? A. If I saw something wrong, I would try to correct it, yes, sir.

Q. So that you were in a position before the concrete was poured in your capacity as foreman of the concrete gang to check all of the steel reinforcing rods before the concrete was poured around them? A. I did not check the steel in the sense that you are speaking of. The inspector did that and I would walk along with him and I would count the bars and observe the size of them, how they were spaced and whether they had the proper clearance from the wall.

Q. There were literally thousands of bars on this job, [161] were there not? A. Oh, yes.

Q. So we are also talking about Prince George's County. This is where this occurred? A. Yes, sir.

Q. How often for example would this inspector come out? A. He came out there every time we made a pour, even if it were only for one footing. He came out and inspected the bars and counted them and checked the dials and on one occasion he even checked the detailing.

Q. So when you are to pour concrete, as far as you are concerned, if you have determined that your job is done you go right ahead and pour? A. Yes, sir.

Q. But if there is something askew, in other words, there is a rod missing or steel missing or form or something like that and you know of this you do something about it? A. We would attempt to correct it, yes, sir.

Q. Are you in a position or do you feel you are in a

position to know that every reinforcing rod was where it should have been when you poured concrete on this job?

MR. MAHONEY: Is this E-14?

MR. KOONZ: I will talk about E-14.

THE WITNESS: Yes, to the best of my knowledge all of the steel was in place and where it should have been.

[162] THE COURT: By steel you mean the—

THE WITNESS: The reinforcing steel, sir.

THE COURT: And the anchor bars—what would that embrace?

THE WITNESS: I spoke specifically then about reinforcing steel.

THE COURT: Would that embrace also the anchor bolt?

THE WITNESS: Yes, sir.

BY MR. KOONZ:

Q. Mr. Manning, as the concrete foreman, did you know that you had to have one and a half inch cover around all of the steel? A. Yes, that is a standard requirement in the trade.

Q. So any steel reinforcing rod, let us assume if we had the column right here, if I was to know exactly where that rod was placed before the concrete was poured and went in half an inch, I would hit steel, would I not, an inch and a half rather? A. Yes.

MR. KOONZ: That is all.

CROSS EXAMINATION

BY MR. GIONFRIDDO:

Q. You say you had to go back and replace concrete on E-14 after the column fell? A. Yes, we put the patch back on.

[163] Q. How big an area did you have to patch? A. Just the recess where the column sat in that pocket in the recess in an opening in the floor and it was done.

THE COURT: What was the size of that?

THE WITNESS: I would say that it would be down about between one and one and a half feet deep. We patched the top of that column as I see it drawn right there. We

had to cut it back and repour it and put a new set of bolts in.

BY MR. GIONFRIDDO:

Q. Were you able to see the reinforcing steel? A. Yes, we had to go down and we had to cut deep enough so that the new concrete would be bonded to the existing reinforcing.

Q. When you found this existing reinforcing, was it where it was supposed to be? A. I do not know. That is too long ago.

Q. If it was not where it was supposed to be from what you told Mr. Koonz would you not have—

THE COURT: I think you are arguing with him now. I will sustain the objection to that, sir.

MR. GIONFRIDDO: I have nothing further, Your Honor.

MR. KOONZ: I have no more, Your Honor.

MR. MAHONEY: That is all.

THE COURT: You are excused.

(Witness excused.)

[164] MR. MAHONEY: I call Richmond Garlinski. Whereupon.

RICHMOND GARLINSKI

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MAHONEY:

Q. Would you state your full name? A. Richmond Garlinski.

* * *

Q. What is your occupation? A. Contractor.

Q. What is your capacity with Ray Gains, Incorporated?
A. I am the president of the company.

Q. What does that company do, sir? [165] A. We do reinforcing steel placing. We do structural steel erection. We do concrete work.

Q. How long have you personally been engaged in the steel business? A. Approximately 30 years.

Q. Thirty years, sir? A. Yes.

Q. And you are familiar with the custom and practice in the trade in erecting steel columns? A. Yes.

Q. Mr. Garlinski, what is the practice with respect to the erection of steel columns for the use of or requirement of guy wires?

* * *

[166] Q. Mr. Garlinski, I believe my question was, was it the custom and practice of the trade in the use of structural steel to use guy wires in the use of erection of columns on a building? [167] A. As a safety precaution and common sense factor you should guy off your work.

Q. How was this done and when is it done in relation to the erection of the beams in the other component parts of the steel? A. It should be done prior to any welding or any tightening of bolts.

Q. Is there any requirement for the use of guy wires in steel construction such as the job we are talking about today in any of the manuals on steel construction? A. The T.A.I.S.C. Code requires guying off of work.

* * *

[171] BY MR. MAHONEY:

Q. Mr. Garlinski, to your left you see the plans for this particular job set out and in the plans there is a reference you will note to a steel construction manual. Now, I am going to ask you what I have in my hand now is the manual to which those plans refer? A. This is the manual to which they refer.

THE COURT: You say yes?

[172] THE WITNESS: Yes.

BY MR. MAHONEY:

Q. In that manual are there certain standards concerning erection of steel pertaining to the use of guy wires? A. Yes.

Q. Do you know what they require? A. Yes.

Q. Does the manual of steel construction require the use of guy wires on columns before the beams are joined? A. Yes.

Q. Would you tell us, Mr. Garlinski, why guy wires are needed on columns before the other steel is attached? What is its purpose? A. The purpose is to align the columns and to plumb the columns so that they are in vertical position that when the welding or building occurs that the members will be in correct position as per plans and specifications.

Q. If they are not plumb and if they are not guyed and other steel members are attached, what happens? A. Well, there is a tendency to rake.

Q. What does that mean? A. Rake in the lateral position in a horizontal plane. Too much weight will be placed on a column that is out of plumb.

Q. Then what happens if too much weight is placed on a [173] column that is out of plumb.

Q. Then what happens if too much weight is placed on a column out of plumb? A. If any incident occurs, it would cause this weight to shift and it would cause either the columns and beams to come apart and fall over. It is just like a shifting of weight. It would shift and something would happen.

Q. This is prevented by the use of guy wires which plumb the column? A. The guy wires are for more than one purpose. They are not only to plumb and align the column but also are used for safety precautions.

Q. What safety precautions? Is it what you just referred to? A. That specific reason.

MR. MAHONEY: That is all I have.

* * *

BY MR. KOONZ:

Q. Is this your manual? A. It belongs to my estimator.

Q. Can you show me or let me see in that manual where [174] the regulations are for the use of guy wires and the erection of steel? A. It is in part 5 under specifications and codes.

Q. Will you show that to me in the book, please? A. It is under section 125, under erection, 125(1) bracing.

Q. May I just see it? This is what you were referring to? A. That is part of it.

Q. Will you read "bracing" to us, please? A. "The frame of a steel skeleton building shall be carried up true and plumb. (C.I.S.C. Standard Code. 7-H) Temporary bracing shall be introduced wherever necessary to take care of all loads to which the structure may be subjected including equipment and operation of same. Such bracing shall be left in place as long as may be required for safety. Wherever there are piles of material, erection equipment or other loads carried during erection, provision will be made to take care of stresses from such loads. As erection progresses the work shall be secured, bolted or welded to take care of all dead load, wind, and erection stresses.

"Alignment: No riveting, permanent bolting or welding shall be done until as much of the structure as will be and thereby has been properly aligned."

Q. Do you want to read some more? Where does that say [175] this steel in the posture it was in should have been guyed? A. Right in this paragraph.

Q. You are familiar you have indicated with steel erection, are you not? A. Yes.

Q. You have jobs going now? A. Yes.

Q. You are familiar also or aware also this was a one-story building as it were; in other words, this steel was only going to be on one story? A. It was two stories.

Q. There was a basement? A. Steel was in two stories.

Q. Steel was in the basement. There is no steel to go above this steel? A. There are two stories to it.

Q. The Super Giant that sits there today has a main floor and a basement? A. Yes.

Q. Is there any steel above that main floor? A. What do you consider the main floor?

Q. It's the largest part of the floor. A. The center columns beneath the first floor which is the ground floor and the center columns above are two stories.

Q. In the trade this would not be considered or referred to as a one-story steel erection on this job now? [176] A. You would call it two stories, two lifts of columns.

Q. On your gangs today and six years ago do you have your gangs guy every column as it is put up? A. We do

not guy every column, but we guy to secure the columns and to align them properly and make them plumb.

Q. You guy them if they are way out of plumb? A. You can get them plumb without guying them off.

Q. If, for example, in this instance the steel was out of plumb when it was being erected and it had been referred to as raising in plumb, would the bar joists have been able to have been placed as they were placed? A. Let me hear the question again. You mention an engineer. I do not know what engineer you are referring to.

Q. I will ask the question. A. I cannot answer the question.

Q. My question is: You have a construction gang, do you not, to erect steel, Ray Gains, Incorporated, in addition to reinforcing rods? A. Yes.

Q. Do you have your men guy every column? A. No. No, they do not guy off every column.

Q. When steel is erected in this area the steel column is placed first on the base plate and you secure the anchor bolts, is that correct? A. Yes.

[177] Q. Do you guy that column? A. If necessary, yes.

Q. If it is out of plumb? A. I said if it is necessary.

Q. What would make it necessary? A. Well, the type of construction that we are faced with.

Q. Assume then in this instance it was not necessary in the opinion of the iron workers to plumb or guy this column. Would you rely on the opinion of your iron worker whether or not the column is setting sufficiently to proceed with the next installation? A. Would you repeat that question?

(The reporter read the question.)

THE WITNESS: No, I would not.

BY MR. KOONZ:

Q. Who would make the decision? A. If it was my job, I would make the decision.

Q. In this instance the steel proceeded with its erection and there was no indication that this first column or the

column E-14 or E-14 was out of plumb and the iron workers then proceeded to attach a beam to it. You would not stop the job and have somebody come in and measure it and determine whether it was set. You rely on their judgment?

MR. MAHONEY: I object to that question, because the [178] testimony was this column was slightly out of plumb.

THE COURT: Ladies and gentlemen, you do not get any evidence from any of us. It is your recollection, not ours. My recollection is it was slight, if any. But it is your recollection, ladies and gentlemen, not ours. You do not get any evidence from any of us. You get your evidence from the witness stand.

BY MR. KOONZ:

Q. Let us take this approach. Until a building is plumb, usually every column is a bit out of plumb. It is rare that you set a column in perfect plumb, is that correct? A. That is right.

Q. Then if the iron workers that are erecting the steel set a column and determine that it is reasonably in plumb, do they not then proceed with the next move, whatever it be? Is this not the practice? A. If it is within the tolerance, yes.

Q. The next step would be to secure a beam to that column? A. Yes.

Q. If it is within the tolerance—I will use your expression—then there is no need to guy at that point, is there? A. Yes.

Q. There is a need? [179] A. Yes.

Q. If it is within the tolerance? A. Yes.

* * *

Q. If a column is reasonably plumb in the opinion of the erector, the steel may be—

THE COURT: Let us relate it to this, E-14.

BY MR. KOONZ:

Q. In this instance the column that sat on concrete, [180] E-14, was reasonably plumb in the opinion of the erectors.

the iron workers. Would there be any need to guy it? A. I do not want to answer that question because I already know there was not one guy on the job.

Q. Can you answer the question?

THE COURT: If you can answer it, do so. If you cannot, say you cannot.

THE WITNESS: I cannot answer that question.

THE COURT: What do you mean by tolerance? What is your measure or definition of tolerance? I understood you to say if within tolerance you would not use the guy line. What constitutes tolerance that you would imply, sir?

THE WITNESS: According to the manual you have tolerance for plumb. In other words, if it is more than one-eighth of an inch in ten feet, it would be out of plumb.

THE COURT: In other words, if it is more than one-eighth inch, you would then say or I am correct in concluding that you would say if it is more than one-eighth of an inch out in ten feet, you would require guy lines?

THE WITNESS: You require guy lines to secure your building for safety and for plumb.

THE COURT: That is not what I have asked you. I understood you to say you would not use a guy line on every column, that there is an element of tolerance and if it be within that measure of tolerance which you now state to be [181] one-eighth of an inch in ten feet that you would not use guy lines?

THE WITNESS: Well, I have got to explain the procedure of erection, and then we can go on from there. If you would not mind

THE COURT: I don't mind at all. I am trying to understand you.

THE WITNESS: We start out with if you have a tied-in column, in this case the job was in a tied-in column. It was a straight row of beams on a line of columns, this job. The only thing tying these beams to the wall or the other line of beams was joists.

BY MR. KOONZ:

Q. The bar joists were being set when this gentleman fell.

A. The bar joists were set on most of the building. They were already up onto the second tier of bar joists. There is another row of bar joists on top of these bar joists underneath.

Q. You had nothing to do with the steel erection on the building, did you? A. Nothing.

Q. In fact your gang had gone onto something else when this steel gang came along? A. We were working there.

[182] Q. But you had finished this area? A. Yes.

Q. You had placed the reinforcing rods as you were supposed under the specifications, is that right? A. Yes.

Q. So you[r] interest in this job was in your contract, in fact what your corporation was getting paid for was to set reinforcing rods, nothing else? A. Yes.

Q. You did not supervise steel erection, did you? A. No.

Q. You did not supervise pouring of concrete, did you? A. No.

Q. You only concentrated on reinforcing rods? A. Yes.

Q. Where do you draw your iron workers, Mr. Gains, for construction crews? A. From the local union.

Q. That is Local 5? A. Local 5.

Q. You were a member, were you not, of one of these locals? A. Local 201.

Q. Reinforcing rod gang? A. Yes.

[183] Q. Is that Mr. Vermillon's local union? A. Yes.

Q. And you are drawing rodmen from that crew today? A. Yes.

MR. KOONZ: I have no more questions of this witness.

REDIRECT EXAMINATION

BY MR. MAHONEY:

Q. I am going to draw another diagram. Now, Mr. Garlinski, Mr. Koonz asked you a number of general questions concerning when you would guy steel. Now, I am going to draw your attention specifically to this building. You referred to this as a two story building, the bottom story being the basement, is that correct? A. Two lifts of columns, not through the whole building.

Q. Well, there was probably 15 feet here then from the floor to the basement or maybe a little more, is that right?

A. Something. I am not too familiar.

Q. My only point is I am trying to indicate this line here is the ground level. But you do have a basement? A. Yes.

Q. We are concerned with columns that are on the edge of the building, is that right? A. Yes.

Q. In other words, there are four columns. What would be your practice as far as this size column, 25 feet in height, [184] on the edge of a building be with respect to the use of guy wires? A. We would guy them off.

Q. Then you would guy each one of them, would you not? A. Yes.

Q. You mentioned these are not tied in. Did you mean there are only beams on some of them? They are not connected on more than one corner? A. They do not recreate a box effect. In other words, you have a beam running parallel to beams with no tie beams between.

Q. There is nothing in here? A. The columns that would occur parallel to these are inside the building.

Q. Inside, right. Then there is no connecting there? A. No, there is no connecting beam.

Q. In this situation guy wires are necessary? A. Yes, sir.

MR. MAHONEY: I have nothing further.

THE COURT: Is he saying that in his opinion or is he saying that is the custom of the trade?

MR. MAHONEY: Is that your opinion, or is that the custom of the trade?

THE WITNESS: It is my opinion. It is the custom of the trade and also a requirement under the T.A.I.S.C. Code.

[185] RECROSS EXAMINATION

BY MR. KOONZ:

Q. Mr. Gains, you are telling us then you abide by your opinion in your trade in your business? A. Yes.

Q. That every time under these circumstances you erect columns such as these you guy them? A. Under those circumstances, yes.

THE COURT: Under those circumstances you mean what, sir?

THE WITNESS: Well, there is a specific reference made to a specific type of column and every one of those columns we would guy off.

THE COURT: Are you indicating, sir, that this book will say if you are erecting columns such as Column 14 in connection with others that regulations require they be guyed anticipatory of bolting or welding beams or joists?

THE WITNESS: Yes.

BY MR. KOONZ:

Q. One of the purposes of guying is to plumb, is that not right? A. One of the purposes is to plumb.

Q. And you normally plumb a building when you have your steel up do you not? A. Yes.

[186] Q. And you do your welding after the building is plumb, do you not? A. Yes.

Q. So that for example when you are setting bar joists and the ends of them have to be welded to the columns or the beams rather, you would plumb first and then weld?
A. Yes.

MR. KOONZ: That is all.

MR. MAHONEY: Defendant, Moses-Ecco, rests.

MR. GIONFRIDDO: I call Mr. Joseph Matezyk.
Whereupon,

JOSEPH MATCZYK

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GIONFRIDDO:

Q. Will you state your full name? A. Joseph Matezyk.

Q. Where do you live? A. 5204 - 25th Avenue, Hillcrest Heights.

Q. Mr. Matezyk, where are you employed? A. For Ray Gains, here in the District, well, in the metropolitan area.

Q. How long have you been employed? A. Eight and a half years.

[187] Q. In what capacity are you employed with Ray Gains? A. As foreman in reinforcing steel.

Q. How long have you been in the reinforcing steel business, Mr. Matezyk? A. Ten years.

Q. I direct your attention to July of 1961. Were you with Ray Gains at the Glenridge Shopping Center, the Giant building we are concerned with? A. Yes, I was

* * *

[189] Q. On the Glenridge job, were you foreman of the Ray Gains crew at that time? A. Yes, I was.

Q. As a foreman did you actually install reinforcing rods, or did you have a crew to do so? A. I worked some with the crew, but as a rule I had a crew and laid out the work for them.

Q. Now, we are particularly interested in a column identified as E-14 on the plans which you have at your elbow. This was a column in a wall. When these columns were tied on this job and particularly E-14, what was your job in relation to the tying? A. Well as far as pilaster, I make up the pilaster.

Q. Would you explain what a pilaster is? A. A pilaster, as a rule whenever it is built, it is a reinforced column built in a wall. It would be a pilaster. But if it is separate, it is a column.

Q. So a column that is part of an overall wall? A. That is true, and if it is individual, it is a column.

Q. When you say you would build a pilaster, you are referring to reinforcing iron that goes in it? A. Definitely, yes.

Q. Was this reinforcing iron tied prior to the building of the form, to the pouring of the concrete or after? [190] A. Prior. It would be impossible to get it in otherwise.

Q. Now, when the pilaster iron is tied and set in place—and when I question you, I am referring to this particular job at this particular time—what would you do then and what did you do then after it was tied and set in place?

A. Then we have to set our horizontal scale, which is in the walls, which go on through the pilaster. Pilaster adds strength and also the wall.

Q. When the pilaster is tied and the horizontal steel is in, was there an inspection proceeding at that time? A. All times after we finish our job, I go over it and if I think it is ready for inspection, I notify the superintendent of the job. Usually it is a general contractor or subcontractor and I notify their superintendent I am ready for inspection.

Q. When the inspector came out, did you have anything to do with the inspector? A. As a general rule I go with the inspector and we go through our work. If there are any discrepancies in his opinion, he usually has the plans, structural plans and if there is anything in his mind that is not correct, I have to correct it.

Q. Was this procedure followed on column E-14 on this job? [191] A. Yes.

THE COURT: When you say this case, you are referring to E-14?

THE WITNESS: Yes, sir.

THE COURT: You are saying there was nothing to correct on the inspection?

THE WITNESS: Yes, sir.

BY MR. GIONFRIDDO:

Q. After inspection did there come a time when concrete work was built around your iron work? A. Yes.

Q. Whose job was that? A. In this case it was Moses-Ecco Company. They were the concrete contractor. They set up the form to contain the concrete.

Q. After these forms were built, is that when the concrete was poured over the steel? A. That is right.

Q. How much time elapsed from the time that you tied your steel and had it inspected until the time actual pour was made? A. These are pretty high walls. I would say about three or four days.

MR. GIONFRIDDO: That is all I have.

[192]

CROSS EXAMINATION

BY MR. KOONZ:

* * *

[193] Q. Maybe I can save some time. I am looking at a pilaster. This is not the best drawing because there is one behind the other. These are four number eight reinforcing rods and this is formed up around there. A. Yes.

Q. Because of the size of this you spliced here, did you not? A. No.

Q. You put these in two sections? A. No.

Q. That is what I just asked you. A. No.

Q. So that your rods were one whole piece, the whole length of the column, concrete column? A. Yes.

Q. I was under the impression you did it in two sections. A. No.

Q. While you are here, let us assume this is your reinforcing rod, your pilaster as we are calling it. Where would you rib this or brace your rods? How would you do that?

[194] A. You just put a band around them. You have reinforcing bands around them. They are usually number three. You will tie them here in this corner.

Q. Is it steel like this? A. That is three-eighths.

Q. That is not a band. A. But it is made out of this steel, yes.

Q. It had an angle also on it? A. Your band usually is round.

Q. This gets around the four rods? A. That is true.

Q. Keeps them together? A. Separated.

Q. And you can climb on them if you are strong enough? A. Yes.

Q. The point is, there are bands at various heights up the rod? A. That is true.

Q. In fact, there is a band — let us draw a concrete line let us assume this is the concrete deck. How high or how close to that bottom of that concrete would your last band be? A. It would vary. It all depends.

Q. Bracing bands — it says all steel must be covered by an

inch and a half of concrete? A. An inch and a half over the top of the vertical bar.

[195] Q. Right around here. I want you to tell me, if that is correct? A. If it so states.

Q. Is this the practice, that you band the steel as you go up? A. Yes.

Q. So that if this concrete was to be cut away either six or eight inches in addition to the rods that you placed, it would show a band also, would it not? A. Yes.

Q. In other words, under that concrete there is as called for anyway these rods plus the band? A. Yes.

Q. So there would be steel of two natures, the reinforcing rods vertically and the bands horizontally? A. I would have to go over the plans to see what height or what the space in these banks went around.

Q. The plans usually follow the practice? A. As a rule they will say you place it 12 inches on center. You will start your first one over half the distance to the bottom and then go eleven inches from the bottom.

Q. Is it not the practice when you are near the top of the bars you usually have a band there? A. Usually.

[196] Q. Mr. Matczyk, what is your trade, sir? A. I am an iron worker, reinforced iron worker.

Q. Local 201? A. Yes.

Q. Are you a member of Ron Vermillion's Local 201? A. He is our business agent.

Q. You are familiar with him? A. Yes, I am.

Q. You run your rod gang, steel comes on the job — somebody else usually provides it, some other contractors and in this case it was Steico Steel. You go and place your reinforcing rods, is that right? A. Yes.

Q. How long have you been at this trade? A. Ten years.

Q. Are there not times that steel comes on the job the wrong size? A. You mean size or length?

Q. Length. A. Yes.

Q. In fact this happens quite a bit, does it not? A. I would not say that.

Q. But it happens? A. It happens.

Q. What do you do then, or what should you do? [197]
A. You notify the fabricator.

Q. And you hold up the job? A. Yes.

Q. Mr. Matezyk, you have been in this trade for ten years. Have you observed steel reinforcing rods installed that were not the size that they should have been? A. As far as size -

Q. I am talking about length. A. Yes.

Q. You have. A. Yes.

Q. Your job is not the reason why. It is to put the rod in?
A. To place the steel.

* * *

[199]

PRESTON R. GEORGE

* * *

DIRECT EXAMINATION IN REBUTTAL

BY MR. KOONZ:

Q. Would you state your name? A. Preston R. George.

Q. Where is your residence? A. 5 West Maple Street, Alexandria, Virginia.

Q. What is your present occupation? A. International representative for Iron Workers.

Q. Are you a member of the local iron workers union?
A. I am past business agent of Local Union No. 5.

Q. In July 1961 were you business agent of Local 5 at that time? A. I was.

Q. Will you be kind enough to tell us in your capacity in 1961 as a business agent of this local union, what was your job? A. My job was to take care of the membership, place them on jobs and so forth.

Q. Did you in the course of this job visit job sites from time to time? A. I did.

[200] Q. When an accident occurred, were you usually called to go to the job? A. Yes. That is part of my duty.

Q. Mr. George, how long have you been an iron worker, sir? A. Thirty-seven years.

Q. How long have you erected iron or steel in this area?
A. I have been involved in it for the 37 years.

Q. The Washington area? A. Yes.

Q. You are a native of this area? A. Yes.

Q. Are you familiar, sir, with the practice in this area of erecting steel? A. Yes.

Q. How it is done? A. Yes.

Q. Did you yourself ever erect steel? A. Yes.

Q. For approximately how many years? A. Fifteen years.

Q. During the course of your employment, 1961, July 1961, were you familiar with the steel that was being erected at the Super Giant Store at the Glenridge Shopping Center of Maryland? A. Yes, I was.

[201] Q. Had you been on that job occasionally? A. Yes.

Q. Do you recall when this gentleman seated here, Mr. Linney Williams, was hurt? A. Yes, I do.

Q. Before that were you on the job? A. I do not recall whether I had visited the job or not prior to his accident.

Q. Were you on the job the day he was hurt, were you in a position to observe the steel that had already been erected? A. Yes.

Q. Were you familiar with the manner in which the steel was being erected? A. Yes.

Q. Did you have in your local union as a practice a set way in which steel is erected? A. More or less, yes.

Q. Is there a practice and standard in the trade of how steel goes up? A. Oh, yes.

Q. Now, Mr. George, will you tell us just from your knowledge and experience — let us take 1961 and let us take this particular job and take it step by step — how you would [202] erect the steel and do what was called for on the job, the framework that was put up, and start it, if you will, with the column. A. We would erect the column first and secure it with the anchor bolts.

Q. Would you then secure a beam to that? A. That is true.

Q. Then when your beams and columns were up, would you place your bar joists? A. Yes.

* * *

Q. Do you recall the bar joists? A. Yes.

Q. Can you recall approximately how long they were? I am talking about the bar joists. A. No, they would reach from bay to bay. The bay would be as wide as this room and for long spans it could be as long as this room.

Q. Were you aware or do you recall what Mr. Williams was doing when he fell? A. He was. I understand he was on top of the iron when [203] it went down.

Q. Assuming that there is testimony, Mr. George, that steel was erected column by column, beams attached to the steel, and that at the time Mr. Williams fell he was bridging with metal strips bar joists to bar joists as he went along. Assuming this is the evidence. At this point would there be any need for guying this steel? A. You say putting in the bracing?

Q. Would there be any need for guying the steel? A. It all depends, whether if he is going to plumb it up, he would have to guy it.

Q. Would he do his partial bridging first? A. He could, yes.

Q. Would he weld the ends of the bar joists before he plumbed it? A. Before he plumbed it?

Q. Yes. A. No, he could not plumb it.

Q. So you plumb it first and then weld the end of the bar joists, that is the practice? A. Yes.

Q. That is the practice? A. Yes.

Q. You were at the scene of the accident how soon after it happened? [204] A. I don't know. When I get a call like that I go immediately to the job. Just how long after I don't know - I would not recall.

Q. Was it the same day or the next day? A. I believe it was the same day. It could have been the next day.

Q. When you got there was the steel still down? A. Yes.

Q. Can you describe for us what had fallen if you recall, how much steel? A. The bar joists and columns had been down. They cleared up the best part of it. But the column was still down.

A. No. You mean these rods here?

Q. Yes. A. No.

Q. Are you familiar with what a reinforcing rod looks like? A. Oh, yes, yes.

Q. Did you see anything that looked like this? A. No.

Q. Did you see any steel at all? A. No, not in that concrete.

MR. KOONZ: I have no further questions.

CROSS EXAMINATION IN REBUTTAL

BY MR. MAHONEY:

Q. Mr. George, how soon after the accident occurred did you arrive at the scene? A. I would not know. It has been so long I do not recall. But as a rule when something like this happens I go as soon as I am called.

Q. When you arrived, were any of the outside columns on the building guyed? A. I do not recall.

Q. Did you look? A. I do not recall whether they were or not.

Q. Was the column that fell guyed? [215] A. No.

Q. Now, which way did the column fall? A. Into the building.

Q. It fell into the building? A. Yes.

Q. Where did it land in the building? A. It came straight over like a 45 into the building.

Q. Like a 45? A. It came in just as it broke off.

Q. And it brought a beam with it? A. There was a beam with it.

Q. Did the beam also land inside? A. When I arrived, yes.

Q. So that the concrete you are talking about was pulled forward into the building, is that right? A. That is right.

Q. What number column was this, do you know? A. I do not recall.

Q. How long were you there? A. Oh, I was on the job site I guess several hours.

Q. There is no doubt in your mind the column fell into the building, is there? A. Now, whether they had moved

it or not I am telling you where it was when I arrived there. Whether it did or not, I do not know.

[216] Q. Was it laying at a 45 degree angle on the slab inside the building? A. Yes.

Q. Where was the plate laying to which it was attached? A. On the ground right out from the wall.

Q. You say you remember seeing one anchor bolt that was attached to the column? A. That is right.

Q. Was it attached to the column or the concrete? A. It was attached to the column.

Q. Was there any concrete around it? A. No.

Q. Underneath this column was the baseplate, was it not? A. Underneath, yes, a small baseplate.

Q. When the column fell was there any concrete attached to the baseplate? A. No.

Q. You did not see any? A. As far as I am concerned, it was not.

Q. The only thing you saw was the bolt? A. The bolt and the baseplate.

Q. Well now, was this not concrete that broke away from where the baseplate came from? [217] A. The top of it, the baseplate, when it went, that part of the concrete there out was gone. But it did not stick to the baseplate.

Q. Where did it go? A. I do not know. I guess it is part of this I got.

Q. Did you see where it went? A. No.

Q. You did not see where it went? A. No, I do not know where it went.

MR. MAHONEY: I have no further questions.

CROSS EXAMINATION IN REBUTTAL BY MR. GIONFRIDDO:

Q. Mr. George, this anchor bolt that was still in the base of the column, was that the entire anchor bolt or part of one? A. To me it was the entire anchor bolt as you have it drawn.

A. No. You mean these rods here?

Q. Yes. A. No.

Q. Are you familiar with what a reinforcing rod looks like? A. Oh, yes, yes.

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MR. MAHONEY: I have no further questions.

CROSS EXAMINATION IN REBUTTAL BY MR. GIONFRIDDO:

Q. Mr. George, this anchor bolt that was still in the base of the column, was that the entire anchor bolt or part of one? A. To me it was the entire anchor bolt as you have it drawn.

Q. And this was absent the concrete? A. Yes - I did not - well, there might have been dust or something on it. There were no hunks of concrete on it.

Q. You told Mr. Mahoney that it was the portion under the baseplate where the concrete broke out but that there was no concrete on the baseplate itself, is that right? A. I did not see it. They could have knocked it off [218] or something. But there was none there when I got there.

Q. But the broken portion of the concrete is the portion under the baseplate? A. It was down deep underneath the baseplate, yes.

Q. Can you see the bottom of this diagram? A. Yes.

Q. In our way this is supposed to mean a view from the top down, all right? A. I can imagine it, yes.

Q. This is supposed to be the outer limits of the pilaster on which the steel column was set. A. Right.

Q. And these being of course the reinforcing rods, this being the baseplate, this is the beam itself and these the anchor bolts. Now, will you come down here please? A. Yes.

Q. Would you show us the area that you are referring to under the baseplate up here? Would you show us on that diagram where that concrete was broken away? A. This is your column (indicating). This is the baseplate. It was broken underneath of the column, from under here. Here is your baseplate. This concrete was broke out underneath this (indicating), out this way.

Q. Now, this being the baseplate will you translate this area to this diagram and show us where the concrete was [219] chipped out? A. We are on the same frame here. This was the baseplate. Well, it broke out the same as that up here, coming out from the anchor bolt, out here. It is down there and out here.

Q. Will you put your initials on there, please? A. Yes.

Q. Would you resume the stand, please.

MR. GIONFRIDDO: I have no further questions.

[219] REDIRECT EXAMINATION IN REBUTTAL
BY MR. KOONZ:

Q. How far did this piece break off? A. The outer piece, how far it broke from that anchor bolt, out to the outside?

Q. Perhaps you better come back so there will be no question. You have indicated to Mr. Gionfriddo's question this broke to the end here. A. This was in concrete. This is your base plate here. This is your anchor bolt. It came out here and down this way.

Q. How far did this break? A. All the way to the edge out there.

Q. The edge of the baseplate or the edge of the concrete? A. The baseplate, but it came out, it was way out to [220] the edge of the concrete.

Q. We xed in that line. Did it break out that far? A. What I saw of it came out to the edge of the concrete.

MR. KOONZ: I have no more questions.

RECROSS EXAMINATION IN REBUTTAL
BY MR. MAHONEY:

Q. Mr. George, using this diagram now, and this being the building, is this the way it went in; in other words, was the broken area way from the way the column fell? A. No, it was broke with it.

Q. So the building would be in here? A. Yes.

Q. Now on the outside of the column on the outside of the building was any of this concrete broken? A. The wall you see this pier is on a wall. It is built up in a wall. It is

wider than the wall. It was broke out to the inside edge of that wall.

Q. Was there any concrete on the outside edge of the building broken? A. I would not like to say.

Q. You do not know? A. I would not like to say whether the outside was broke with it or not.

Q. So the area you say was broke was in here? [221]
A. In the inside.

Q. That is the only area where you saw that it was broken? A. That would be inside of the building.

* * *

[Washington, D.C.: March 6, 1967]

[224] MR. MAHONEY: The defendant, Moses Ecco, now that all of the evidence has been concluded, moves again for a directed verdict in its favor on the grounds that the plaintiffs have failed to prove a prima facie case of negligence against it.

(Argument follows.)

[225] REBUTTAL ARGUMENT OF JOSEPH KOONZ

MR. KOONZ: * * * [228] I submit this question to you. We are talking about all this activity on the steel, this lateral pressure and so on. This is what caused the columns to be out. Visualize with me along this counter. Here is the column. Here are two beams. The only testimony that you have is that a column fell, one column, no more. If all of this pressure that we are talking about would have torn anything down, where was the adjoining column? Why did not this fall, and this one fall - with all of that pressure, all that weight, why - because when you examine the base of this concrete where this column fell, there was no support. There probably was support in the others. We don't know. But they did not come down. This column fell, and when it fell, there was nothing in it to show that the support that it should have had to hold it up for this very purpose was there.

* * *

[232] MR. MAHONEY: May we approach the Bench?

THE COURT: Come to the Bench, gentlemen.

(At the Bench)

MR. MAHONEY: If Your Honor, please, during the course of this trial, we have scrupulously avoided a reference to any prior collapse of the column because of the discussions with the Court. In rebuttal argument the Plaintiff's attorney suggested this never happened before.

THE COURT: That is not my recollection of what he said. "Why did not these other columns fall?"

MR. KOONZ: At the same time of this accident is what I said.

MR. MAHONEY: The record will disclose the four columns put on that board and that the end column is the one that fell, which was the subject matter of the first trial. I think in all fairness this prejudices our case.

MR. KOONZ: My statement stands on its own. I said that then other columns would have fallen at the same time. The fact that the other column fell ten days before - that was back up when Mr. Williams got hurt again. I have no problem with what I said.

THE COURT: What are you suggesting, Mr. Mahoney?

MR. MAHONEY: I move for a mistrial.

THE COURT: I will deny it.

[Filed March 15, 1967]

**MOTION FOR JUDGMENT NOTWITHSTANDING
VERDICT OR IN THE ALTERNATIVE
FOR A NEW TRIAL**

Comes now the defendant, Ray Gains, Inc., and moves this Honorable Court for entry of Judgment NOV or in the Alternative for a New Trial on the grounds that the verdict is not supported by the evidence or the law and for its reasons therefore relies upon the matters set forth in the attached Points and Authorities.

John F. Gionfriddo
Attorney for Defendant
Ray Gains, Inc.

[Certificate of Service, dated March 15, 1967]

[Filed March 16, 1967]

**MOTION OF DEFENDANT MOSES-ECCO TO
SET ASIDE VERDICT FOR PLAINTIFF OR IN
THE ALTERNATIVE, FOR A NEW TRIAL AND
FOR A REMITTITUR**

Defendant Moses-Ecco moves the Court to set aside verdict and judgment for the plaintiff entered herein on March 6, 1967 and for entry of judgment for defendant Moses-Ecco, or in the alternative, for a new trial and for a remittitur and for reasons therefor says:

A. *For Judgment for Defendant Moses-Ecco as.*

1. There was no evidence on the issue of proximate cause for submission of the case to the jury.

B. *For a New Trial as.*

1. The verdict was contrary to the overwhelming weight of the evidence;

2. Plaintiff's attorney improperly argued to the jury that no other column fell when this was contrary to fact and he was previously instructed by the Court to make no reference to the prior accident which occurred 10 days earlier.

Considered and denied, RBK, 3/23/67

C. *For a Remittitur as.*

1. The verdict was in excess of the ad damnum and should be reduced to at least \$45,000.00.

s/ John F. Mahoney, Jr.
Attorneys for Defendants

[Filed March 10, 1967]

**MOTION TO AMEND COMPLAINT TO
INCREASE AD DAMNUM CLAUSE
TO CONFORM TO VERDICT**

Comes now the plaintiff, through counsel, and moves this Honorable Court for an order amending the complaint to increase the *ad damnum* clause from Forty Five Thousand Dollars (\$45,000.00) to Fifty Five Thousand Dollars (\$55,000.00) to conform to the jury verdict, and for reason therefore prays that the attached Memorandum of Points and Authorities be read as a part of this motion.

The plaintiff further requests that any oral argument on this motion be held after March 20, 1967 due to the absence from this jurisdiction of counsel for the plaintiff until that date.

/s/ Joseph H. Koonz, Jr.
Attorney for Plaintiff

[Certificate of Service]

Granted, RBK, 3/23/67

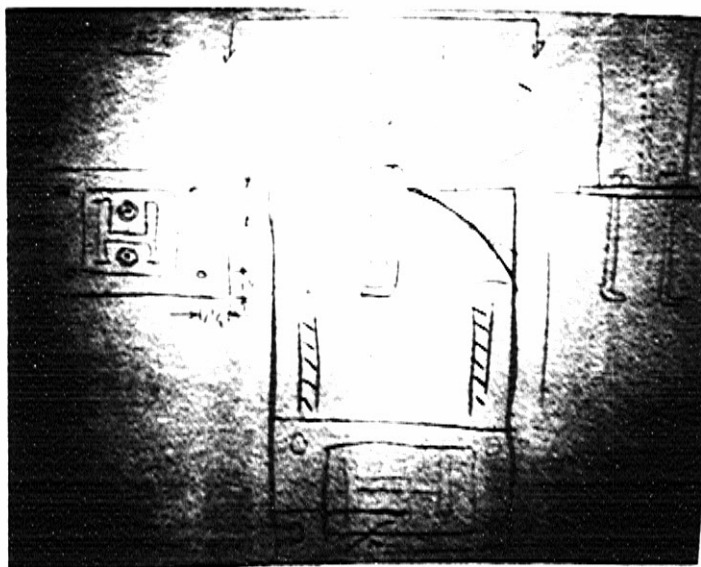
[Filed April 19, 1967]

NOTICE OF APPEAL

Notice is hereby given this 19th day of April, 1967, that defendants, Moses-Ecco Company, Inc. and Ray Gains, Inc. hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 23rd day of March, 1967 in favor of plaintiff, Linney Williams against said defendants, Moses-Ecco Company, Inc. and Ray Gains, Inc.

/s/ John F. Gionfriddo
Washington, D. C.
Attorney for Defendant,
Ray Gains, Inc.

/s/ John F. Mahoney, Jr.
Attorney for Defendant,
Moses-Ecco Company, Inc.



PRETRIAL STATEMENT OF PLAINTIFF

Occurrence:

On July 31, 1961, the plaintiff Linney Williams was employed by Kenmar Steel Construction Company and was engaged in working as an ironworker and welder at the site of the Glenridge Shopping Center, Prince Georges County, Maryland.

Prior to that date the defendants agreed to perform certain duties in the construction of the Shopping Center. The defendant Moses-Ecco agreed to install certain anchor bolts and pour concrete; the defendant District Concrete agreed to mix, prepare and deliver concrete; and the defendant Ray Gains, Inc., agreed to install the reinforcing rods around which the concrete was to be poured.

As a result of the negligence of the defendants in performing their agreements as above-mentioned, the plaintiff was injured when a steel column fell, pulling down with it other steel columns and beams and the bar joist on which the plaintiff was welding.

Negligence:

The plaintiff's fall and subsequent injuries were caused by the following acts of negligence on the part of the defendants.

As to Defendant Moses-Ecco:

- a) Failure to add sufficient amount of calcium chloride to concrete as it arrived for pour.
- b) Adding too much calcium chloride to concrete when it arrived for pour, thus forcing the concrete to dry and set faster and result in a weakened concrete condition.
- c) Failure to pour concrete according to specifications in that the depth of the concrete over the anchor bolts was insufficient.

- d) Failure to properly install anchor bolts.
- e) Failure to properly secure anchor bolts.
- f) Failure to properly pour concrete.
- g) Violation of the specifications concerning the pouring of concrete.
- h) Violation of the specifications concerning the installation of anchor bolts.
- i) Failure to follow accepted construction practices in the setting of anchor bolts.
- j) Violation of prescribed safety standards of Maryland governing the construction of commercial buildings.
- k) Failure to warn plaintiff of the dangerous condition that existed.
- l) Failure to properly inspect and discover the defective condition of the concrete and anchor bolts which did in fact exist.
- m) Allowing plaintiff to work on the bar joists and steel beams when the defendant knew or should have known that the concrete was not properly poured and was still green.
- n) Failure to provide the plaintiff with a safe place to work.
- o) Informing Kenmar Steel that the concrete was ready for steel erection.
- p) Failing to properly inspect and supervise the pouring of concrete.
- q) Failing to discover that the concrete deck would not support the anchor bolts when Moses-Ecco knew that a similar accident had occurred but ten days before on July 21, 1961.

As to Defendant District Concrete Company, Inc.:

- a) Failure to mix concrete according to instructions and specifications.

b) Failing to mix concrete according to the requirements and standards promulgated by the District of Columbia and Maryland.

c) Failing to provide a sufficient amount of concrete to adequately cover the surface intended.

d) Permitting an improper amount of calcium chloride to be added to concrete before it was poured resulting in the concrete failing to reach full strength at the time of plaintiff's fall.

e) Creating a condition in the concrete at the time of mixing which resulted in its being weak and unsafe at the time of plaintiff's fall.

As to Defendant Ray Gains, Inc.:

a) Failure to set anchor bolts according to specifications.

b) Failure to place reinforcing rods around the area of the base of the column next to the anchor bolts according to specifications.

c) Failure to use the correct size of anchor bolts to be used at the base plate to secure the column.

d) Failure to properly tie reinforcing rods to provide maximum strength.

Injuries:

Severely comminuted fracture of left elbow.

Laceration of the upper lid of the left eye with marked ecchymosis.

Contusion of the left eye with retinal edema.

Severe laceration of right thigh.

Sprain, bruises to right knee.

Bruises and contusions over entire body.

Pain, suffering, shock to nervous system.

Permanent: (Age 39)

Malformed left arm and elbow.
 Severe atrophy, left arm.
 Loss of strength, use of left arm.
 Muscle weakness, right leg.
 Facial scars.
 Loss of wage-earning capacity.
 Disfigurement of left arm.

Special Damages:

Dr. Julius S. Neviaser	\$ 1,135.00
Dr. Oscar Lavine	105.00
Dr. James H. Masterson	50.00
Washington Hospital Center	1,400.24
National Orthopedic Hospital	15.00
Prince George's General Hospital	498.35
Loss of Earnings (82 weeks @ \$170.00)	13,940.00
Future Loss of Earnings	20,000.00
Future Medical Expenses	3,000.00

Stipulations Requested:

Hospital Records
 Hospital Bills
 X-ray Plates and X-ray Reports
 Health, Education and Welfare Mortality Tables
 Maryland Building Code Regulation applicable
 to construction of new buildings

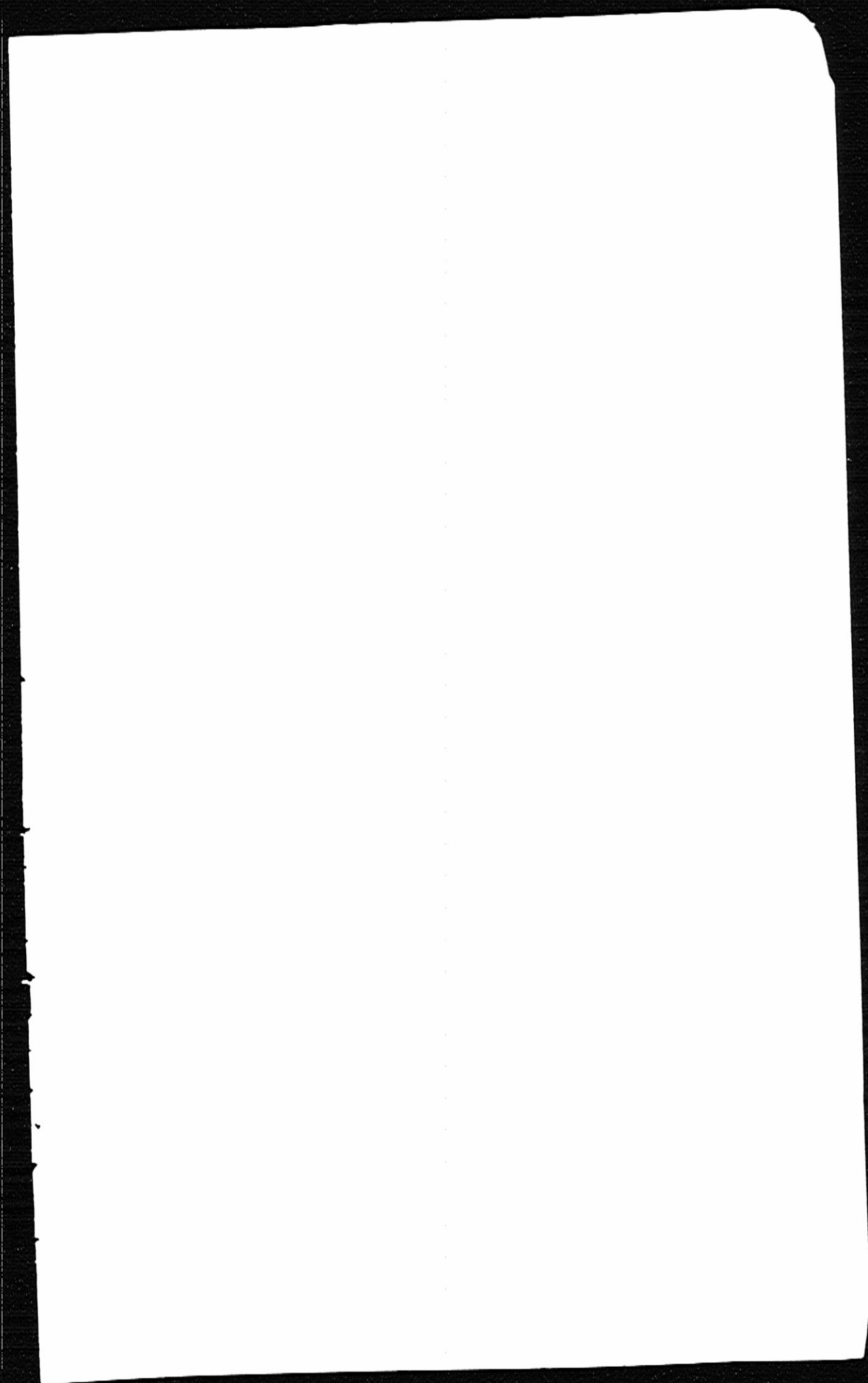
The plaintiff requests that the parties exchange within twenty (20) days the names and addresses of all witnesses known to them, and a similar exchange of witnesses as they become known and within forty-eight (48) hours of the alert of this action for trial.

The plaintiff requests that this action not be scheduled for trial until after January 1, 1967.

Ashcraft and Gerel

s/ Joseph H. Koonz, Jr.
Attorney for Plaintiffs

[Certificate of Service, dated November 9, 1966]



BRIEF FOR APPELLANT MOSES-ECCO COMPANY, INC.

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,111

MOSES-ECCO COMPANY, INC.
and
RAY GAINS, INC.,
Appellants,

FILED AUG 14 1967

v.

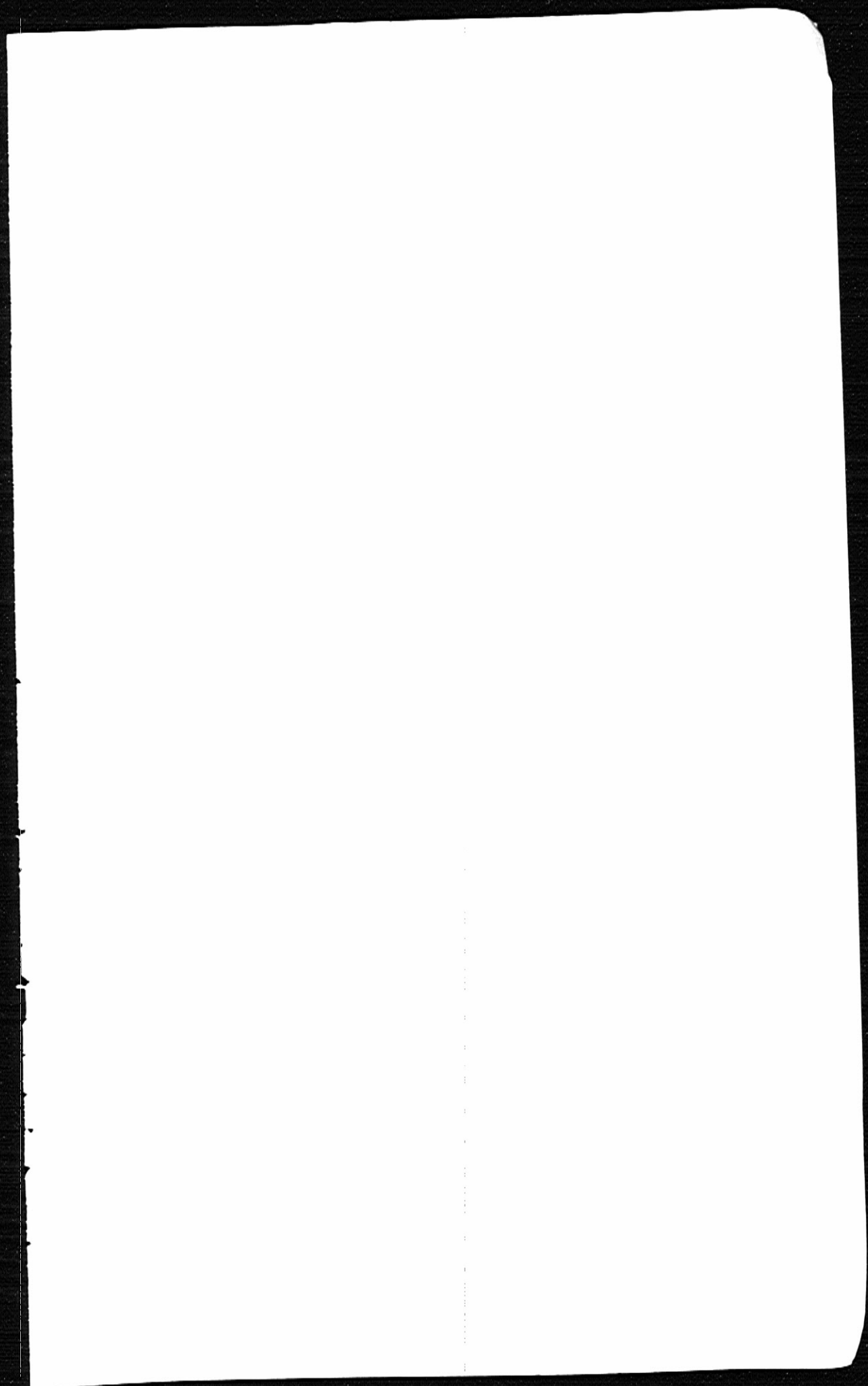
Nathan Williams
LINNEY WILLIAMS,
Clerk *Appellee.*

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHARLES E. PLEDGER, JR.
JOHN F. MAHONEY, JR.
JAMES C. EASTMAN

925 Washington Building
Washington, D. C. 10005

*Attorneys for Appellant, Moses-
Ecco Company, Inc.*



(i)

STATEMENT OF QUESTION PRESENTED

In the opinion of appellant the question is:

Did the Court below err in failing to grant motion of Appellant for judgment notwithstanding the verdict in a suit for damages for injuries sustained by plaintiff when part of a steel structure collapsed during construction of a Giant Food Store in Maryland where:

(a) the evidence produced by plaintiff on the issue of negligence gave at least equal support to the inference that appellant was not negligent; and

(b) there was no testimony that any act or omission on the part of appellant proximately caused the collapse of the steel?

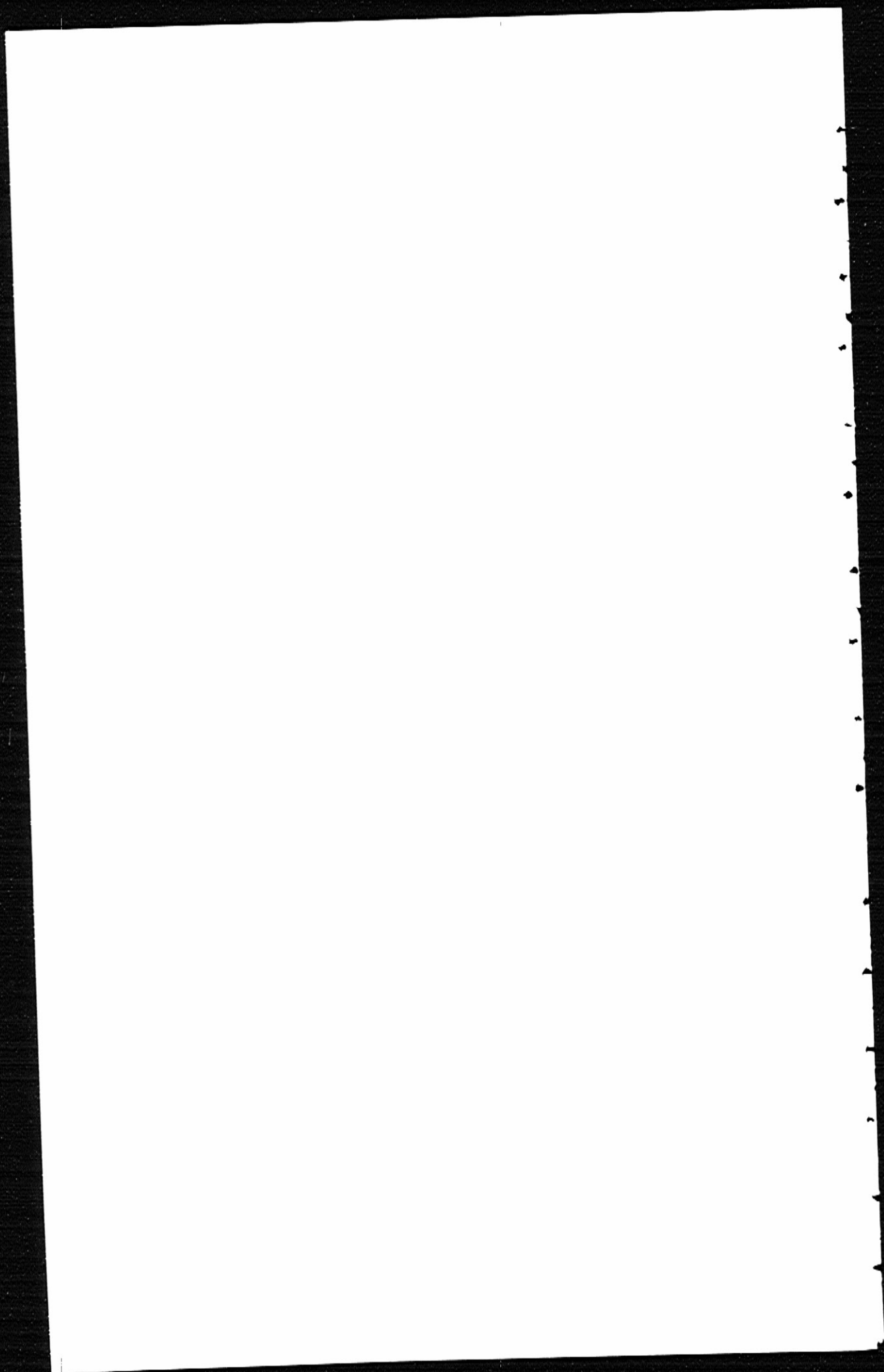


TABLE OF CONTENTS

JURISDICTIONAL STATEMENT	1
STATEMENT OF THE CASE	2
STATEMENT OF POINTS	12
SUMMARY OF ARGUMENT	12
ARGUMENT	
I Plaintiff Failed in His Burden of Proving Negligence Against Moses-Ecco as the Evidence Did Not Estab- lish Absence of Reinforcing Rods in the Concrete Beneath the Column That Fell	13
II There Was No Evidence That Any Act or Omission on the Part of Moses-Ecco Proximately Caused the Collapse of the Steel Structure	17
III The Court Erred in Failing To Grant a Mistrial When Counsel for Appellee Improperly Argued to the Jury ...	22
CONCLUSION	23

TABLE OF CASES

Engle v. Stull, decided March 23, 1967, __ U.S. App. D.C. __, __ F.2d __	17
Ewing v. Goode, 1897, 78 F. 442	16
Giant Food Stores, Inc. v. Fine, 1959, 106 U.S. App. D.C. 95, 269 F.2d 542	19
Green v. Reynolds Metals Company, 1964, 5th Cir., 328 F.2d 372	20
Gunning v. Cooley, 1930, 281 U.S. 90, 50 S.Ct. 231, 74 L.Ed. 720	15
Hamill v. Union Trust Company of Maryland, 241 Md. 219, 216 A.2d 286 (1966)	21
Kenney v. Washington Properties, Inc., 1946, 76 U.S. App. D.C. 43, 128 F.2d 612	17
Pennsylvania R. Co. v. Chamberlain, 1933, 288 U.S. 333, 53 S. Ct. 391, 77 L. Ed. 819	15

(iv)

Pennsylvania Railroad Company v. Pomeroy, 1956, 99 U.S. App. D.C. 272, 239 F.2d 435	16
Richardson v. Gregory, 1960, 108 U.S. App. D.C. 263, 281 F.2d 626	18
Safeway Stores, Inc. v. Preston, 1959, 106 U.S. App. D.C. 114, 269 F.2d 791	16
Union Electric Light & Power Co. v. Snyder Estate Co., 1933, 8th Cir., 65 F.2d 297	22

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,111

MOSES-ECCO COMPANY, INC.
and
RAY GAINS, INC.,
Appellants.

v.

LINNEY WILLIAMS,
Appellee.

*APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLANT MOSES-ECCO COMPANY, INC.

JURISDICTIONAL STATEMENT

This is an action for damages for personal injuries instituted in the United States District Court for the District of Columbia. A final judgment was entered for plaintiff-appellee from which this appeal is taken. The jurisdiction of this Court is founded upon the provisions of Title 28, Section 1291, U.S. Code.

STATEMENT OF THE CASE

This is an action for damages arising out of injuries sustained by plaintiff when part of a steel structure collapsed during the construction of the Glenridge Shopping Center, Prince George's County, Maryland on July 31, 1961. This appellant was the concrete subcontractor on the job and appellee-plaintiff below, was an employee of Kenmar Steel Company, the structural steel subcontractor (JA 1, 2). The co-appellant, Ray Gains, Inc., was the reinforcing steel subcontractor. (JA 6) Following the trial of a companion suit - *Nolker v. Moses-Ecco Company, Inc.*, (C.A. 3035-61), which culminated in a verdict for the defendant, plaintiff moved to amend the complaint to bring in as additional defendants - District Concrete Company, Inc., one of the concrete suppliers, and Ray Gains, Inc., the reinforcing steel subcontractor. (JA 1, 2, 6.) But Plaintiff Virginia Williams and Defendant District Concrete Co. were dismissed from the suit by agreement before trial.

In a jury trial before Judge Keech on March 1, 1967, a verdict was returned for plaintiff against defendants Moses-Ecco Company, Inc. and Ray Gains, Inc. for \$55,000.00. Following the trial the ad damnum clause in the complaint was increased to correspond with the jury verdict (JA 110).

For the purposes of this appeal the parties will be referred to as follows: appellant as Moses-Ecco, co-appellant as Ray Gains, and appellee as plaintiff or Williams.

At the pretrial hearing the claims of negligence made against Moses-Ecco related to the composition and placement of the concrete and anchor bolts on the job¹ but

¹(J.A. 112)

(a) Failure to add sufficient amount of calcium chloride to concrete as it arrived for pour.

(b) Adding too much calcium chloride to concrete when it arrived for pour, thus forcing the concrete to dry and set faster and result in a weakened concrete condition.

at the trial all the claims of negligence against Moses-Ecco were abandoned and the theory of the case resolved to whether Ray Gains, the reinforcing steel subcontractor, failed to install reinforcing steel rods in the form beneath column designated E-14, which fell, to the required height and whether Moses-Ecco was negligent in pouring concrete into that form when such reinforcing rods were not installed according to the specifications. An additional claim of negligence made against Moses-Ecco, that anchor bolts which insert into the base plate of the steel column were not properly tied, was unsupported by the evidence and eliminated from the jury's consideration.

(c) Failure to pour concrete according to specifications in that the depth of the concrete over the anchor bolts was insufficient.

(d) Failure to properly install anchor bolts.

(e) Failure to properly secure anchor bolts.

(f) Failure to properly pour concrete.

(g) Violation of the specifications concerning the pouring of concrete.

(h) Violation of the specifications concerning the installation of anchor bolts.

(i) Failure to follow accepted construction practices in the setting of anchor bolts.

(j) Violation of prescribed safety standards of Maryland governing the construction of commercial buildings.

(k) Failure to warn plaintiff of the dangerous condition that existed.

(l) Failure to properly inspect and discover the defective condition of the concrete and anchor bolts which did in fact exist.

(m) Allowing plaintiff to work on the bar joists and steel beams when the defendant knew or should have known that the concrete was not properly poured and was still green.

(n) Failure to provide the plaintiff with a safe place to work.

(o) Informing Kenmar Steel that the concrete was ready for steel erection.

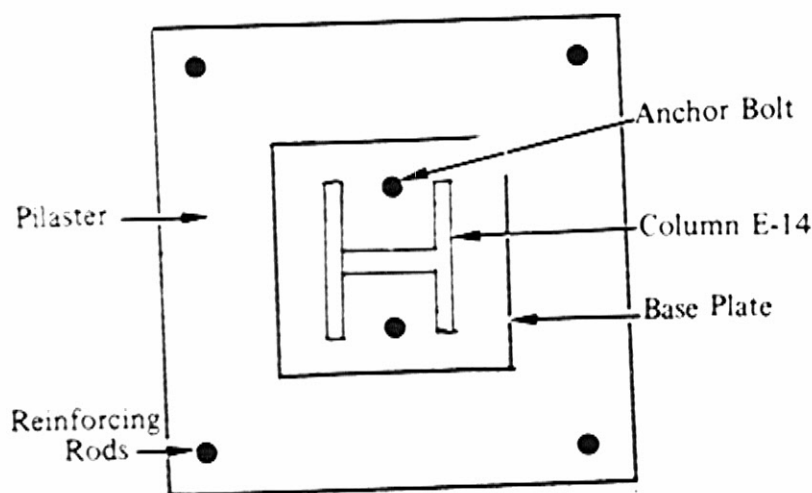
(p) Failing to properly inspect and supervise the pouring of concrete.

(q) Failing to discover that the concrete deck would not support the anchor bolts when Moses-Ecco knew that a similar accident had occurred but ten days before on July 21, 1961.

Some of the construction terms used should be first defined and explained to present a more intelligible statement.

The column that fell, shown on the drawings as E-14, is "I" shaped steel standing 25' high. At its top was a steel beam running horizontal to the floor and bolted to another beam. Between the beams, with a span of about 52 feet were steel bar joists leaning on the flanges of the beams. Beneath the steel column is a concrete pilaster (a concrete column in a wall). Reinforcing rods 15'3" were required by the plans to be placed one on each of the four corners of the pilaster to a height of 1'3" from the top (JA 68). The steel column was attached to the concrete pilaster by means of two anchor bolts 18" - 2' in length with a bend at the bottom. (See diagram, JA 111) These were embedded in the concrete and bolted the base plate of the steel column.

Looking down, the component parts would be arranged as follows:



In an effort to establish a prima facie case of negligence, plaintiff put on several witnesses who testified that they observed the concrete beneath the column that fell and testified that they did not see any reinforcing steel rods. (JA 39-40, 44-45, 100-104) Then with testimony from expert witnesses, plaintiff attempted to establish that the proximate cause of the collapse of the steel was the absence of the reinforcing steel rods but the evidence was totally lacking in this respect. (JA 52-53) As developed later herein, in defense of the plaintiff's contentions, the defendants introduced affirmative evidence to the effect that the steel collapsed by reason of the improper steel construction practices of plaintiff's employer Kenmar Steel Company. (JA 59-74, 84-93)

At the trial, Williams testified that on July 31, 1961, the day of the accident, he was working for Kenmar Steel in the Glenridge Shopping Center, whose job it was to erect and set the steel structure (JA 10-11). His job on the morning of the accident was welding angle irons (JA 12). The section of the steel structure which collapsed and which is pertinent to this appeal, involves a horizontal steel column identified as E-14 on the plans and specifications located in the middle of the south perimeter of the building to which was attached a steel beam running to another column and between the beams the bar joists were resting unsecured. The plaintiff was sitting on the bar joist nearest column E-14 (JA 27). On the morning of the accident the crane put column E-14 in place. It was joined to a beam and then the steel joists were laid, unsecured, on the flanges of the beams (JA 14-15, 37). Williams climbed up column E-14, walked along the beam, and then walked onto the joist, sat down in about the middle and pulled his welding hood over his face. With a welding electrode in his hand, which was attached to a welding machine, he commenced to weld an angle iron to the joist when this portion of the steel structure collapsed (JA 13-18). The column that fell pulled the beam which separated from the unsecured joist on which plaintiff was sitting. This column was not secured by guy wires and it was out of plumb (JA 19) (Williams).

"Q. When you were sitting on this joist, just before you sat down there, did you observe the position of this column, [24] you were able to see it? A. Yes, sir, I think so.

Q. Were you able to determine whether or not this column was out of plumb at all? A. It was probably out of plumb. It probably was, yes, sir, because they had not been plumbed up. Another gang comes along and plumbs up this steel. They come along and put your guys on it and plumb it up. We do not pretend to plumb it up as we go along.

Q. Who plumbs it up? A. The next crew that comes along.

Q. You mean the Kenmar Steel crew? A. Yes, another crew of boys.

Q. You say it probably was out of plumb. Why did you make that statement? Were the columns generally out of plumb? A. Until they are plumbed up, guyed and plumbed up they are generally out of plumb. You set a column on the anchor bolts and it is not usually plumbed.

Q. When you use the word 'out of plumb', you mean that it is leaning? A. No, sir it would be straight up and down.

Q. When it is out of plumb, then it is tilted? A. Yes, it might be tilted a little bit.

Q. So that this column was probably tilted? A. It could have been."

Plaintiff testified that after the steel columns are put in place by the erecting crew and anchor bolts are secured in the base plate, then another crew of steel workers, also employed by Kenmar, come along to guy the columns (JA 19). But none of the columns was guyed on this job before the accident (JA 29).

Charles Hubbell, a crane operator and employee of Kenmar, testified that he was operating a crane on the day Williams was injured (JA 34-35); that the steel column that fell was put in place about 15 minutes before and it fell with a

beam attached, towards the crane and about two feet from it (JA 35-36). He thereafter observed the base of the column and said that a chunk of concrete "six inches wide, wedge-shaped, about eight to ten inches long", was broken off the concrete pillar on the south side to which the steel column was attached (JA 38, 40, 41).

John Snavelly, a co-worker of Williams testified that he was also on the steel structure on a beam on the morning of the accident (JA 43). Following the collapse of the steel members he climbed down and examined the area under the column that fell. He testified that a 9 to 10 inch deep, wedge-shaped chunk pulled out under the base of the column — five inches at the top; that he did not observe any reinforcing rods in that area (JA 42); that the anchor bolts were still attached to the column; and that the chunk of concrete was around the anchor bolt (JA 45).

Plaintiff's expert witness, John Toomey, president of Value Engineering Company, testified that he examined the plans and "some" of the specifications for the Glenridge Shopping Center job (JA 46, 47). He stated that the plans called for 4 number 8 reinforcing rods placed horizontally in the concrete column below at the corners of the square column to come within one and one-half inches from the top. These rods are 1½ inches shorter than the 15 foot column (JA 48) and they provide the tensile strength to the concrete. (JA 50). Mr. Toomey's direct testimony concluded with the following hypothetical question and answer: (JA 52-53)

"Q. Mr. Toomey, assuming that on a particular day at this particular job site during this construction process, iron workers were engaged in erecting steel. Assume further that one of them was helping to hang bar joists. Another was on the other end of the bar joist and a third one, in this case Mr. Williams, was seated in the middle of the 20-foot bar joist beginning to weld and bridge, or do bridging as it is called.

Assuming there is normal movement of these men on the steel, during the course of its erection, and assuming further that there are no reinforcing rods, there are no reinforcing rods that come up as required by the specifications to within one inch and a half of the concrete; assuming further that they are not any higher than 8 to 10 inches from the concrete; assuming further that the column begins to fall, the concrete breaks away and the column falls, what part does the lack of these reinforcing rods, what part would the lack of these reinforcing rods play in the falling of that steel? A. They would negate the effect of and the intent of the anchor bolt. It would be comparable to having the anchor bolt in sand. It would just lift it right out.

Q. If the reinforcing rods were where they should have been, that is, if they had the full extent of their height up to one and a half inches from the concrete, and there was normal sway or movement of that steel, what then would the [110] effect have been on the steel? A. It would be significantly stronger if the reinforcing bars are as they should be. Obviously it would be because that is the purpose of them."

In cross-examination, this witness testified that if the concrete were sufficiently strong as it should have been, i.e. with the reinforcing rods and lateral pressure was applied to the column, then the anchor bolt in the base plate would be the weakest member and would have a tendency to stretch to the breaking point (JA 55).

At the conclusion of Mr. Toomey's testimony, the plaintiff rested and a motion for directed verdict was made on the grounds that the plaintiff failed to make out a prima facie case of negligence against Moses-Ecco. This motion was denied (JA 57-58).

The first witness for the defense was Alexis Smislova, structural engineer and designer of the Glenridge Shopping Center who has designed 23 Giant Food stores (JA 58-60). He testified that his plans with reference to column E-14

called for two anchor bolts to be placed in the concrete column below through the base plate of the steel column; that they were not to be attached in any manner to the reinforcing steel (JA 59). He stressed the importance of having the columns plumb before any bar joists were welded (JA 60) and that the steel structure described by the witnesses just prior to the Williams fall, was unstable and dangerous (JA 61). The joists were resting 2½ inches on the beam flange and unsecured joists have a tendency to roll when walked upon (JA 61). He was then asked what effect would the pressure have against the top of the column, which was out of plumb, with three men walking on top of the steel structures. He replied that there would be an overbalance which would tend to make the column lean more in the direction it was leaning and if the pressure was not removed, the column would probably fall down (JA 62). In falling, the anchor bolts embedded in the concrete below and attached to the base plate of the column, would elongate or "neck down" and eventually snap (JA 62, 63). The sum total weight against the top of the column in this instance was 7,000 pounds (JA 63). This witness then testified that once a column out of plumb has a load applied to the top of it and the column starts moving, the pressure at the base plate increases to the point where it will rip out or fall down (JA 64).

Concerning the procedure to be employed in erecting steel, Mr. Smislova testified that the bar joists should have been secured first before the angle irons were welded to give the structure more stability (JA 66-67). In addition, he testified that inasmuch as the steel reinforcing rods would be at the corners of the concrete column, that a chunk of concrete pulled out from under the base plate, which is in the middle of the column, would not show their (the rods) position (JA 69-70). In other words, to determine whether or not there were in fact reinforcing rods in the column, absent other factors, the break would have to be within an inch and a half from the edge of the column (JA 70).

Mr. V. J. Manning, superintendent for Moses-Ecco on the Glenridge Shopping Center job testified that he was on the job at the time the column E-14 fell (JA 75); that he observed no guy wires on any of the outside columns and that although he observed columns out of plumb, he could not testify that he observed E-14 specifically (JA 76); that a Maryland county inspector accompanied him and inspected the reinforced steel in column E-14 against the drawings before the pour (JA 75) and the steel was all in place (JA 75-77, 83). He stated that he saw that the anchor bolts in E-14 snapped off - one was elongated following the collapse of the steel (JA 76-77). He also testified that after the collapse, he went back and replaced a "patch" of concrete - the recess or pocket underneath the base plate, and set new anchor bolts. Nothing further was done (JA 84).

Raymond Garlinsky, president of Ray Gains, Inc. testified concerning the practice generally employed in erecting steel columns and said that as a safety precaution, perimeter columns should be guyed off, as required under the "Manual of Steel Construction" (JA 85), which was incorporated into the plans for this job (JA 86).

Q. Would you tell us, Mr. Garlinski, why guy wires are needed on columns before the other steel is attached? What is its purpose? A. The purpose is to align the columns and to plumb the columns so that they are in vertical position that when the welding or building occurs that the members will be in correct position as per plans and specifications.

Q. If they are not plumb and if they are not guyed and other steel members are attached, what happens?

A. Well, there is a tendency to rake.

Q. What does that mean? A. Rake in the lateral position in a horizontal plane. Too much weight will be placed on a column that is out of plumb.

Q. Then what happens if too much weight is placed on a column out of plumb? A. If any incident occurs, it would cause this weight to shift and it would cause either the columns and beams to come apart and fall

over. It is just like a shifting of weight. It would shift and something would happen.

Q. This is prevented by the use of guy wires which plumb the column? A. The guy wires are for more than one purpose. They are not only to plumb and align the column but also are used for safety precautions.

Q. What safety precautions? Is it what you just referred to? A. That specific reason."

Joseph Matczyk, foreman for Ray Gains, testified that he prepared the pilaster under column E-14; that in building it, he put in the reinforcing steel, set it in place and tied it and thereafter it was inspected. (JA 94-95). Three or four days later after inspection was made, Moses-Ecco poured the concrete into the column (JA 94-95).

A witness called in rebuttal, Preston R. George, also an employee of Kenmar, testified that he came to the scene after column E-14 fell but he said, contrary to all other witnesses, that the column fell into the building (JA 103). He also testified that the chunk of concrete broke away from the north side of the pillar (JA 101-102).

At the conclusion of Mr. George's testimony Moses-Ecco again moved for a directed verdict which was denied (JA 107)

Because of the possible prejudice that could result in making reference to the earlier accident involving another iron worker named Nolker who was injured when a steel column collapsed 10 days earlier, it was agreed in advance of the trial that no mention would be made of any prior accident. However, in rebuttal argument, plaintiff's attorney inferred that no other column fell on this job and argued that the lack of reinforcing rods under column E-14 was the cause (JA 107). A motion for mistrial was made because of this improper argument but denied (JA 108).

The jury returned a verdict in favor of plaintiff against both defendants in the amount of \$55,000.00 (JA 110). A timely motion to set aside this verdict and for entry

of judgment for the defendant Moses-Ecco was made and denied (JA 109). A motion to amend the complaint to increase the ad damnum from \$45,000.00 to \$55,000.00 was made and granted (JA 110) and this appeal followed (JA 111).

STATEMENT OF POINTS

The points that will be relied on by appellant Moses-Ecco Co., Inc. are:

1. There was no evidence on the issue of proximate cause for submission of the case to the jury.
2. The argument of plaintiffs' attorney to the jury was improper and contrary to the Court's instructions and accordingly, the motion for a new trial should have been granted.

SUMMARY OF ARGUMENT

After abandoning all the alleged claims of negligence against Moses-Ecco with respect to the composition and placement of the concrete under column E-14 as set forth in the plaintiff's pretrial statement, plaintiff then proceeded against this defendant on the theory that, assuming arguendo, the reinforcing steel rods were not properly placed in the pilaster under the column that fell by Ray Gains, the reinforcing steel subcontractor, then Moses-Ecco should not have poured concrete into this column and in doing so it was negligent.

The absence of reinforcing rods was attempted to be shown through witnesses who claimed to have observed the recess area under the column that fell and the chunk of concrete that broke away. There was consistency in most of their testimony which placed the recess area, directly under the base plate of the column (E. 14) which would not reflect the position of the reinforcing rods.

However, a rebuttal witness, Preston George, also an iron worker, attempted to fill this void and testified that the area was broken away at the corner of the column and he

saw no reinforcing rod, which plaintiff contends created an issue of fact as to whether reinforcing rods were in the concrete. It is submitted that these inconsistent inferences in the evidence introduced in plaintiff's case, proved nothing.

Moreover, there is no testimony from any witness, lay or expert, that the collapse of the steel which caused the injuries to plaintiff was proximately caused by the absence of reinforcing rods. There is no testimony at all that the presence of rods would have deterred or prevented the collapse of the steel. On the other hand, there was substantial testimony that the collapse of the steel was probably caused by the improper steel construction practices of plaintiff's employer, Kenmar Steel Co.

Accordingly, plaintiff failed in his burden of proof of negligence and he failed in his burden of proving proximate cause. The Court therefore, erred in submitting these issues to the jury.

ARGUMENT

I

Plaintiff Failed in His Burden of Proving Negligence Against Moses-Ecco as the Evidence Did Not Establish Absence of Reinforcing Rods in the Concrete Beneath the Column That Fell

Moses-Ecco was the concrete subcontractor on the job. Ray Gains was the reinforcing steel contractor as distinguished from Kenmar Steel Company, plaintiff's employer, the structural steel contractor. As these various jobs apply to the particular column that fell, Ray Gains erected and placed the reinforcing steel into the wall column or pilaster; the concrete was then poured around the reinforcing steel by Moses-Ecco, who also affixed the anchor bolts into the concrete. Kenmar Steel, the structural steel contractor, then erected the structural steel on top of the column.

As all other claims of negligence against Moses-Ecco, as set forth in the pretrial statement (JA 112) were abandoned,

the only theory left against this defendant was that it placed concrete in an area which did not contain reinforcing rods in accordance with the plans and specifications of the job. Evidence to establish this point was attempted through the negative testimony of witnesses who examined the recess area under the column that fell and the chunk of concrete that had pulled away from the pilaster. But the sum total of the evidence tends to establish more the presence of the rods rather than the absence of the rods as the foregoing demonstrates:

Testimony From Witness Charles Hubbell (JA 39-40)

The chunk of concrete that broke away was described as a wedge-shaped piece of concrete 8 to 10 inches wide with the impression of the anchor bolt in it, which would place it in the middle or beneath the base plate.

Testimony From Witness John Snavelly (JA 44-45)

A wedge-shaped chunk of concrete 9 to 10 inches deep "5 inches at the top" broke away. The concrete was still attached to the anchor bolt which places the wedge-shaped piece right in the center of the column. This piece he estimated to be 10 inches across and 8 or 10 inches in depth.

Testimony From Witness John Toomey (JA 50-51, 53, 55)

The function of the reinforcing rods is to hold the concrete structure together in tension. Without reinforcing rods, the wall-column lacks tensile strength and should it (structural steel) fall, the anchor bolts would pull out as if in sand. But if the concrete was "sufficiently strong" as it should have been, the anchor bolt would then be the weakest member and would have a tendency to stretch, shear off or break (JA 55).

Testimony From Witness V. J. Manning (JA 77-79)

When the steel fell one of the anchor bolts sheared off and an inch or two of bolt was missing out of the concrete.

Testimony From Witness Preston George (JA 100-104)

This witness was not sure whether he even arrived on the scene the same day of the accident (JA 100) but when he did he said one anchor bolt was still in the column but he does not know where the other anchor bolt was. He testified that the concrete was broken all the way to the edge of the column, 4 to 6 inches in depth, but he is the only witness that placed the column as falling into the building rather than towards the crane; and according to him, no concrete was attached to the base plate (JA 104).

On the basis of this testimony, it would be sheer speculation for the jury to conclude that there were no reinforcing rods up to the required height at the four corners of the pillar as required by the plans and specifications. The fact that one of the anchor bolts elongated or sheared off, and concrete broke off, according to plaintiff's own expert witness, an indication that the concrete had tensile strength which is conclusive of the presence of reinforcing steel rods as they supply all of the tensile strength of the concrete. Only one witness, Preston George, a rebuttal witness, who was put on the stand after no one of the other witnesses placed the recess area in the column to the outer edges of the column, testified differently. But he had the column falling into the building, contrary to all the other witnesses which leaves his testimony rather questionable.

Accordingly we have a case on the issue of negligence which belongs to that class of cases where proven facts give, at the very most, equal support to each of two inconsistent inferences and in such event, neither of them is established. *Pennsylvania R. Co. v. Chamberlain*, 1933, 288 U.S. 333, 53 S. Ct. 391, 77 L. Ed. 819. As a matter of fact, the presence of the rods is the more reasonable and consistent inference from all the evidence. Therefore, having proved no more than this, judgment as a matter of law must go against the plaintiff who must sustain the inference of negligence. *Gunning v. Cooley*, 1930, 281 U.S. 90, 50 S.Ct. 231, 74 L.Ed. 720. This rule remains the law in this jurisdiction.

Safeway Stores, Inc. v. Preston, 1959, 106 U.S. App.D.C. 114, 269 F.2d 791.

In *Ewing v. Goode*, 1897, 78 F. 442, 444. Circuit Judge William Howard Taft stated the rule in this fashion:

"When a plaintiff produces evidence that is consistent with an hypothesis that the defendant is not negligent and also with one that he is, his proof tends to establish neither."

This Court in the oft-cited case of *Pennsylvania Railroad Company v. Pomeroy*, 1956, 99 U.S. App. D.C. 272, 239 F.2d 435 stated at p. 444:

"It is axiomatic that, to prevail in a negligence case, a plaintiff must prove sufficient facts, not only to warrant an inference of negligence, but also to justify an inference that such negligence was proximately related to the injury or death. *Tennant v. Peoria & P.U. Ry. Co.*, 1944, 321 U.S. 29, 32, 64 S. Ct. 409, 88 L.Ed. 520; *Hernandez v. Southern Union Gas Co.*, 10 Cir., 1954, 209 F.2d 606, 610. As we stated in *Collins v. District of Columbia*, 1931, 60 App. D.C. 100, 102, 48 F.2d 1012, 1014: 'The causal connection between the accident and the negligence of the defendant must not be left to mere conjecture or supposition.'

"If we assume here, contrary to what we have concluded above, that the plaintiff has offered sufficient evidence to support a conclusion of negligence, the question remains whether an inference can reasonably be drawn that such negligence was the cause of the fall and resulting death."

The only possibilities referred to in *Pomeroy* were that the vestibule doors in the train out of which the decedent fell, were opened by some employee of the railroad other than the collector, or by Mrs. Pomeroy herself or by some passenger, but this Court said that only by an arbitrary guess could it be inferred that the vestibule doors were opened by a railroad employee, and under such circumstances, plaintiff failed in her burden of proof. (*Id.* p. 445). The

same reasoning applies here. Plaintiff attempted to prove a negative though confusing, inconsistent testimony, which when viewed as a whole, supported the more reasonable inference that reinforcing rods were present in the concrete at the time of the fall.

Looking at the evidence from another view, if the rods were not placed in accordance with the plans and specifications which would create a hazardous condition; certainly an adjustment in the reinforcing steel would have to have been made before the column was replaced on the pilaster after it had fallen. Nothing was done other than bonding the new batch of concrete to the reinforcing steel *which was there* (JA 84). As negligence was not shown through this testimony the question then resolves as to whether there was evidence from the testimony of the lay or expert witnesses relating to collapse of the steel itself upon which a jury could reasonably infer the absence of reinforcing rods. As the next section of this brief sets forth, no such evidence was at any time elicited.

II

There Was No Evidence That Any Act or Omission on the Part of Moses-Ecco Proximately Caused the Collapse of the Steel Structure

This case properly lends itself to expert testimony as a lay jury would not be expected to know the function and purpose of the steel and concrete component parts in structures such as found in this case. *Kenney v. Washington Properties, Inc.*, 1946, 76 U.S. App. D.C. 43, 128 F.2d 612; *Engle v. Stull*, decided March 23, 1967, __ U.S. App. D.C. __, __ F.2d __. Specifically, for the plaintiff to sustain his burden of proving proximate cause, he must prove facts upon which a jury could infer that some act or omission of Moses-Ecco constituting negligence, was a proximate cause of the collapse of steel. To do this, plaintiff attempted to show through negative testimony which, as heretofore discussed it is submitted he failed to do, that rein-

forcing rods were not present to the required height as set forth in the plans and specifications for this project. But assuming *arguendo* this element was proved, nevertheless he must go one step further and establish that such failure was at least one of the proximate causes of the collapse of the steel. Negligence alone is of no consequence unless it is causative of the injury complained of. *Richardson v. Gregory*, 1960, 108 U.S. App. D.C. 263, 281 F.2d 626, 629. Nowhere in the testimony can any such evidence be found. On the contrary, there is affirmative evidence from the architect and engineer who designed the plans that the collapse of the steel was probably due to the improper steel practices of Kenmar Steel Company.

The most that was gotten from the testimony of Mr. Toomey, plaintiff's expert, was that the presence of reinforcing rods in the concrete make the concrete "sufficiently stronger". He was never asked hypothetically or otherwise his opinion as to the probable cause of the collapse of the steel (and probably with good reason) nor was he asked hypothetically or otherwise whether the presence of the reinforcing rods would have deterred or prevented a collapse of steel under circumstances such as were presented in this case.

The substance of Mr. Toomey's testimony, which has any bearing on the issue of proximate cause, is set forth on JA 52-53:

"Q. Mr. Toomey, assuming that on a particular day at this particular job site during this construction process, iron workers were engaged in erecting steel. Assume further that one of them was helping to hang bar joists. Another was on the other end of the bar joist and a third one, in this case Mr. Williams, was seated in the middle of the 20-foot bar joist beginning to weld and bridge, or do bridging as it is called.

"Assuming there is normal movement of these men on the steel, during the course of its erection, and assuming further that there are no reinforcing

rods, there are no reinforcing rods that come up as required by the specifications to within one inch and a half of the concrete; assuming further that they are not any higher than 8 to 10 inches from the concrete; assuming further that the column begins to fall, the concrete breaks away and the column falls, what part does the lack of these reinforcing rods play in the falling of that steel? A. They would negate the effect of and the intent of the anchor bolt. It would be comparable to having the anchor bolt in sand. It would just lift it right out.

"Q. If the reinforcing rods were where they should have been, that is, if they had the full extent of their height up to one and a half inches from the concrete, and there was normal sway or movement of that steel, what then would the [110] effect have been on the steel? A. *It would be significantly stronger if the reinforcing bars are as they should be.* Obviously it would be because that is the purpose of them." (Emphasis supplied)

The foregoing testimony proves nothing and the real issue as to the probable cause of the collapse of the steel was not met. (JA 54). In *Giant Food Stores, Inc. v. Fine*, 1959, 106 U.S. App. D.C. 95, 269 F.2d 542, a biological chemist called by appellee as an expert, testified that when soap is used in washing a terrazzo floor, a chemical reaction occurs producing a slippery film known as calcium stearate. No such film is produced when a detergent rather than a soap is used. But this witness did not see the floor until three years after the accident (in this case, it was five years) and the testimony developed that both detergents and soap had been used at different times during the three months the store had been in operation and before the fall. This Court reversed on this issue stating on page 543, 269 F.2d:

"As was stated by the court in *Balaban & Katz Corp. v. Commissioner of Internal Revenue*, 7 Cir., 1929, 30 F.2d 807, 808:

"Opinion evidence, to be of any value, should be based either upon admitted facts or upon facts, within the knowledge of the witness, disclosed in the record. Opinion evidence that does not appear to be based upon disclosed facts is of little or no value."

"We think the evidence on this point was too speculative to go to the jury."

This opinion evidence established no more than reinforcing rods make concrete stronger by giving it tensile strength. Query: Would the absence of reinforcing rods under the facts of this case cause structure steel to fall, or, should structural steel be leaning or out of plumb with the movement of three men on it, would reinforcing rods deter or inhibit a collapse? The record is totally devoid of any such testimony. From this testimony then, would a jury have been able, based upon the evidence, to conclude that some act or omission of Moses-Ecco *caused* the steel to fall. It could not and to do so was sheer speculation.

In *Green v. Reynolds Metals Company*, 1964, 5th Cir., 328 F.2d 372, the Court stated at page 374:

"There was no evidence presented in this case that indicated what caused Green to fall. There was not as much dust on the ledge as usually accumulated. In any event, there was no showing that the dust or debris on the ledge had anything to do with the fall. To base a finding of negligence on the fact that excessive dust was allowed to accumulate and that Green fell as a proximate cause of such condition would, in the first place, be contrary to the evidence, and in the second place, be entirely speculative and conjectural.

* * *

"There is no question but that proof of negligence may be made out completely with circumstantial evidence. In such instances, if there is evidence that points to any plausible theory of causation, there is a basis of recovery. Southern Ry. Co.

v. Dickson, 211 Ala. 481, 100 So. 665; Harben v. Moore, 234 Ala. 266, 175 So. 264. However, as the case here, evidence which does nothing more than show that the injury could have possibly occurred through a certain way or means, cannot justify the conclusion that it occurred that way or by that means."

Again, in *Hamill v. Union Trust Company of Maryland*, 241 Md. 219, 216 A.2d 286 (1966), an architect testified that a revolving door was located too close to steps leading to the building. However, it was not shown that the location of the revolving door caused the plaintiff to fall. The Court affirmed a directed verdict for defendant stating on page 287:

"Regardless of whether there was a showing of negligence on the part of the defendant, there was no evidence of a causal connection between its alleged negligence and the injury sustained by the plaintiff. We think it is apparent therefore that the trial court was right in directing a verdict for the defendant. Even if the plaintiff had shown that the defendant was negligent in locating the revolving door "too close" to the steps, that fact by itself was not sufficient to establish the liability of the defendant for the injury complained of. In order for the plaintiff to recover, she also had to show that this condition -- the nearness of the steps to the door -- was the direct and proximate cause of the injuries she received. She failed to do so."

The Court Erred in Failing To Grant a Mistrial
When Counsel for Appellee Improperly
Argued to the Jury

At the outset of the trial it was agreed in a colloquy between the Court and counsel that there would be no reference made to the fact that another column fell in this same construction site 10 days prior to the collapse of column E-14 on the same level and at the corner of the building which was the subject matter of the suit of *Nolker v. Moses-Ecco*, Civil Action No. 3035-61 (JA 108). However, in rebuttal argument, counsel for plaintiff stated to the jury "the only testimony that you have is that a column fell, one column, no more * * * why did not this fall and this one fall with all that pressure all that weight, why - because when you examine the base of this concrete where this column fell, there was no support. There probably was support in the others. We do not know. But they did not come down."

As this was rebuttal argument by plaintiff's attorney to which the defense could not reply the jury could reasonably infer that this was the only column that fell during the construction of this building. This was an unfair statement and prejudicial to Moses-Ecco when any improper inferences therefrom could not be explained. Arguments of counsel must be confined to the pertinent evidence and the legitimate inferences that can properly be drawn therefrom. *Union Electric Light & Power Co. v. Snyder Estate Co.*, 1933, 8th Cir., 65 F.2d 297. A timely motion for a mistrial was made and the Court erred in denying it (JA 108).

CONCLUSION

As the evidence adduced proved neither that Moses-Ecco was negligent nor that any act or omission on the part of Moses-Ecco proximately caused the collapse of the steel, it was error for the Court below to allow the jury to speculate on these issues and accordingly the judgment below should be reversed.

Respectfully submitted,

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BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,111

MOSES-ECCO COMPANY, INC.,
and
RAY GAINS, INC.,

Appellants,

v.

LINNEY WILLIAMS,

Appellee.

Appeal from the United States District Court
for the District of Columbia

JOSEPH H. KOONZ, JR.

LEE C. ASHCRAFT

MARTIN E. GEREL

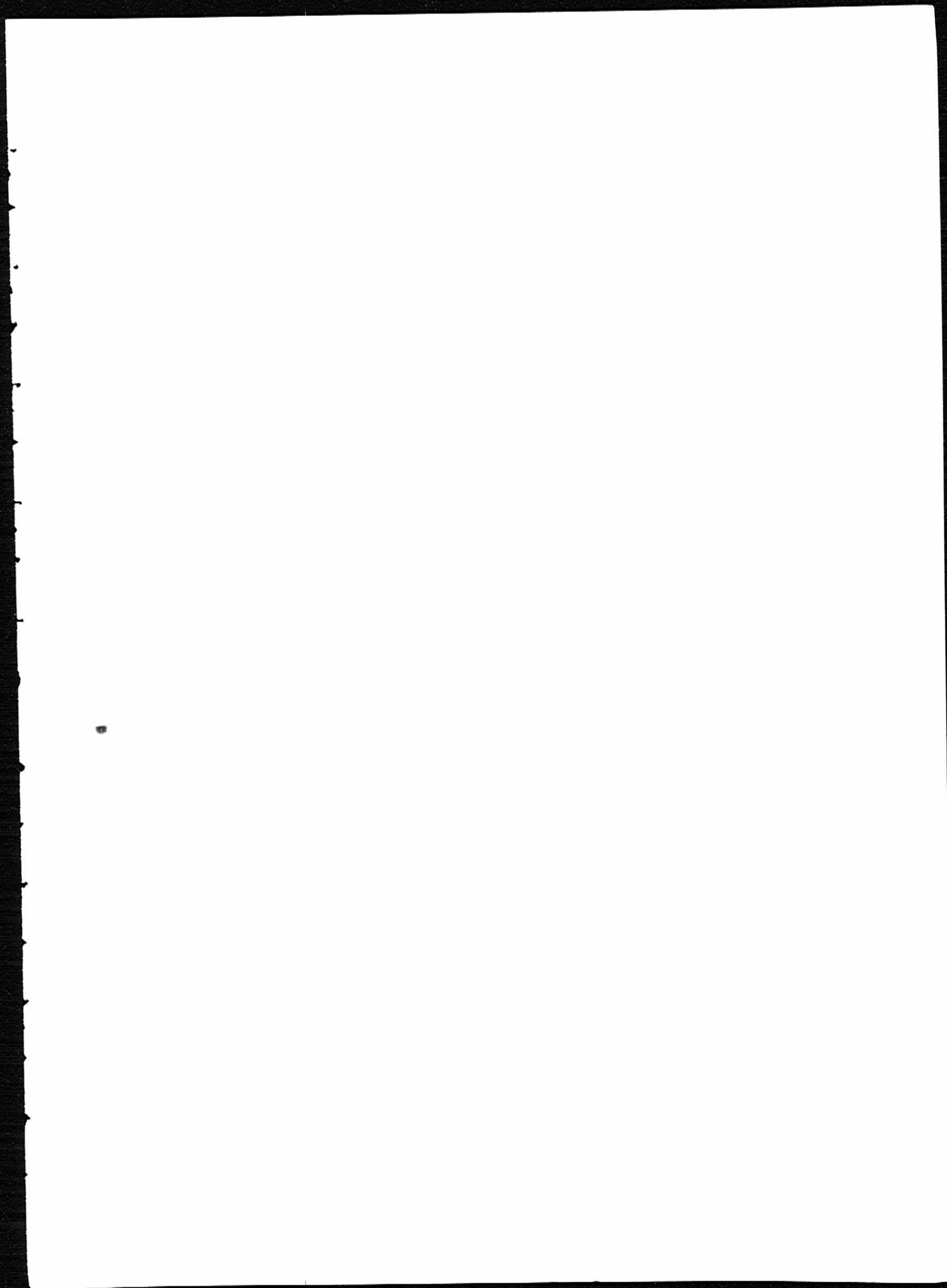
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for the District of Columbia Circuit

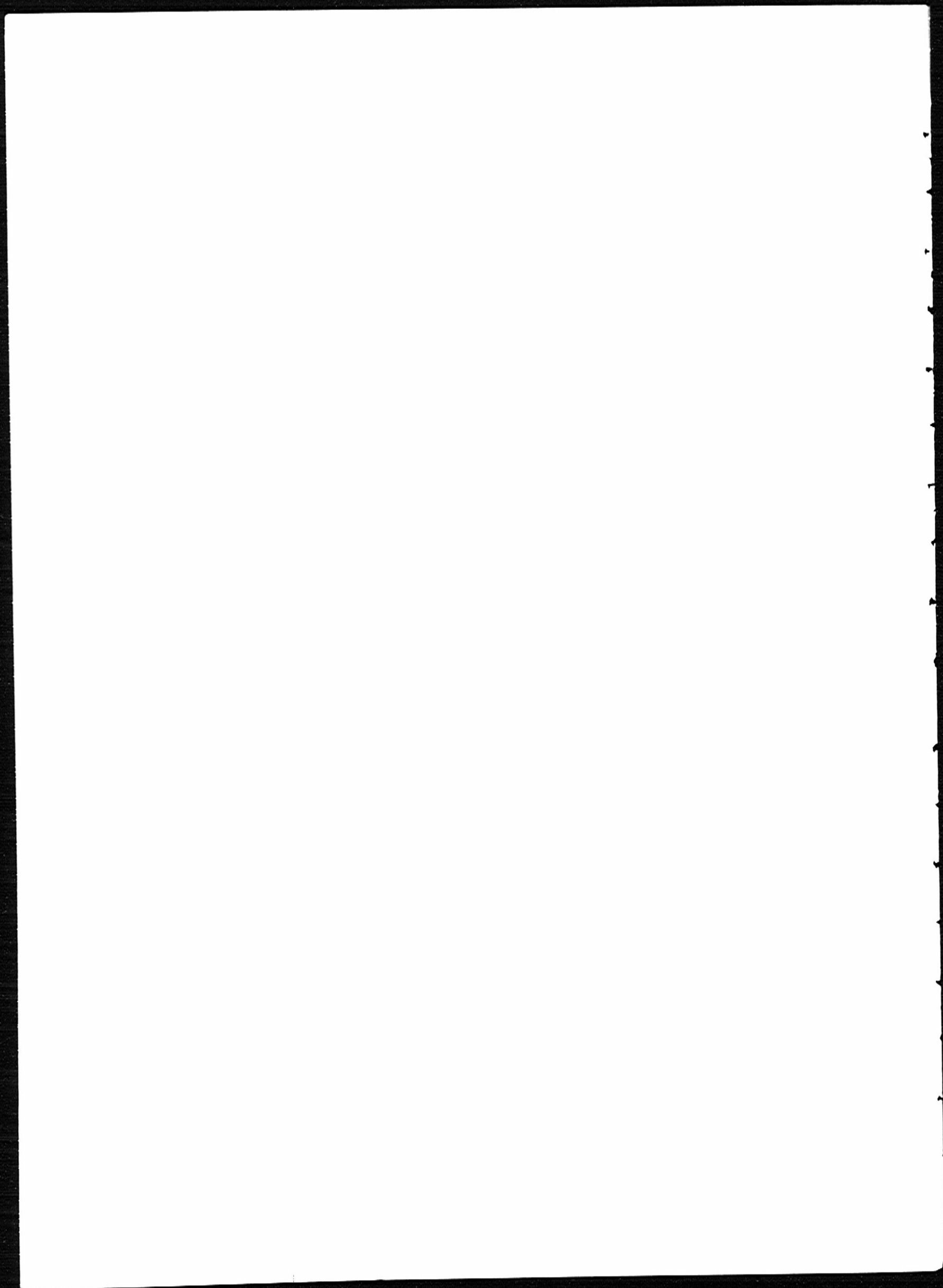
FILED SEP 21 1967

Walter J. Paulson
CLERK



STATEMENT OF QUESTION PRESENTED

The question is whether, in a personal injury action for damages by an ironworker against the subcontracting appellants, the verdict of the jury should be affirmed when there was evidence to show that reinforcing rods used to strengthen concrete which, in turn, supported a steel column, were not installed according to specifications and resulted in a failure of the concrete and the falling of the steel column.



INDEX

	<u>Page</u>
STATEMENT OF QUESTION PRESENTED	i
COUNTERSTATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	4
ARGUMENT	
I. Plaintiff Produced Evidence Of Negligence On The Part Of The Defendants Sufficient To Justify A Jury Finding To That Effect	6
II. The Acts Or Omissions To Act On The Part Of The Appellants Were A Proximate Cause Of The Collapse Of The Steel	12
III. The Trial Judge Properly Denied Motion For Mistrial	17
CONCLUSION	19

TABLE OF CASES

Brodsky v. Safeway Stores, Inc., 80 U. S. App. D. C. 301, 152 F.2d 677	7
*Danzansky v. Zimbolist, 70 App. D. C. 234, 105 F.2d 457 (1939)	15
Green v. Reynolds Metals Corp., 328 F.2d 372 (5th Cir. 1964)	14
Gunning v. Corley, 281 U. S. 90	7
*Hanna v. Fletcher, 97 U. S. App. D. C. 310, 231 F.2d 469	12
Higashi v. Shifflett, 90 U. S. App. D. C. 302, 195 F.2d 785 (1952)	14
Howard v. Swagart, 82 U. S. App. D. C. 147, 151, 161 F.2d 651, 655	13

	<u>Page</u>
Munsey v. Webb, 32 App. D. C. 185, <u>affirmed</u> , 231 U. S. 150	12
*McGettigan v. National Bank of Washington, 115 U. S. App. D. C. 384, 320 F.2d 703 (1963), <u>cert. denied</u> , 375 U. S. 943	15
Miller v. Union Pacific, 290 U. S. 236, 267	16
Pennsylvania R.R. v. Pomeroy, 99 U. S. App. D. C. 272, 239 F.2d 435	8
Safeway Stores, Inc. v. Preston, 106 U. S. App. D. C. 114, 269 F.2d 781	7
*Tennant v. Peoria & P. U. Ry Co., 321 U. S. 29, 35	8
Washington Gas Light Co. v. Connolly, 94 U. S. App. D. C. 156, 214 F.2d 254 (1954)	9
*Washington & G.R.R. v. Hickey, 5 App. D. C. 436, <u>affirmed</u> , 166 U. S. 521 (1897)	16
Winstead v. Hildenbrand, 81 U. S. App. D. C. 368, 159 F.2d 25 (1946)	16

* Cases principally relied on by appellee.

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

This is a case involving the breaking away of concrete and the fall of a steel column on a construction site resulting in serious personal injury to the appellee, Linney Williams.

On July 31, 1961, Mr. Linney Williams, the appellee, was employed as an ironworker by the Kenmar Steel Construction Company at the construction site of a new Super Giant Store in the Glenridge Shopping Center, Maryland (J.A. 11). The appellant, Moses-Ecco Company, Inc. (hereinafter referred to as Moses-Ecco), was the subcontractor for the concrete construction (J.A. 75). The appellant, Ray Gains, Inc. (hereinafter referred to as Ray Gains), was the subcontractor for the erection of steel reinforcing rods (J.A. 91).

The appellee was engaged in tack welding some bridging between the bar joists to keep them from bending (J.A. 11). The bar joists were approximately 40 feet long and were placed on steel beams by the use of a crane (J.A. 12-13). Mr. Williams was using a welding hood and a welding electrode to secure an angle iron to the bar joist (J.A. 13). He testified that his activity in the bar joists was the usual practice in his trade (J.A. 12).

While performing this work the steel fell and Mr. Williams went down with it, severely injuring his arm (J.A. 13).

Working with the appellee at the time of the accident were John Snively (J.A. 42) and Charles Hubbell, a crane operator (J.A. 34). Mr. Snively testified that on the date of the accident he was working with the appellee on the steel erection crew (J.A. 42). He stated that after the steel fell he observed the concrete that had broken (J.A. 42). Mr. Snively further testified that a wedge-shaped piece of concrete broke away 8 to 10 inches deep (J.A. 42). The concrete had broken off the outside of the pier (J.A. 45). Mr. Snively testified that he saw no steel reinforcing rods or steel of any kind showing through where the concrete had broken (J.A. 42-43).

Charles Hubbell, a crane operator on the job at the time of the accident, testified that he observed the base of the steel column that fell (J.A. 35). He testified that a piece of wedge-shaped concrete split

off measuring 8 to 10 inches from the top of the column. This witness also testified that he saw no steel showing through the concrete (J.A. 36, 38).

The amount of concrete that had broken off and the shape and location of the break were drawn and identified on a blackboard (J.A. 111) by Preston George, a witness for the appellee, and by V. J. Manning, the concrete foreman for Moses-Ecco called as a witness by the appellants. Both witnesses testified that a corner of the concrete pier broke away, and so indicated by drawing a line where the break occurred and initialing it (J.A. 111).

The undisputed evidence was that the concrete pier that broke was numbered Column E-14. The architect for the building, Alexis Smislova, testified from the specifications that E-14 called for four #8 reinforcing rods 15 feet three inches long to have concrete cover of 1-1/2 inches (J.A. 68). These steel rods were to be placed in the four corners of the concrete pier (column). Concrete was then poured over and around the reinforcing rods (J.A. 68-69).

Mr. Smislova further testified that if the concrete chunk that broke off exceeded 1-1/2 inches, the reinforcing rods should have been seen (J.A. 69).

The basic function of the reinforcing rods was to give strength to the concrete (J.A. 69). They provided tensile strength to the concrete (J.A. 52).

An expert in structural engineering and stress analysis, John Toomey, was called as a witness on behalf of the appellee (J.A. 47). This witness testified that if the reinforcing rods were not where they should have been stress on the concrete would cause it to crack (J.A. 52). Mr. Toomey further testified that the lack of reinforcing rods would negate the effect and intent of the anchor bolt to which the steel

column had been secured. He testified that it would be like having the anchor bolt in sand. It would just lift right out (J.A. 53). This expert also testified that if the reinforcing rods were where they should have been and if they had the full extent of their height up to one and a half inches, the concrete would have been significantly stronger (J.A. 53).

The concrete foreman for Moses-Ecco, Mr. V. J. Manning, testified that before concrete was poured at column E-14, he personally inspected the reinforcing steel (J.A. 75), as did Mr. Matczyk, the foreman for the appellant Ray Gains (J.A. 95). Mr. Manning also testified that he did not know if the reinforcing steel at column E-14 was where it was supposed to be (J.A. 84).

There was no testimony from any witness that the steel column that fell was any more out of plumb than is normally expected in the erection of steel that was being undertaken at the time of this accident (J.A. 20, 60, 64, 89).

The testimony of the steel erectors on the job site at the time of the accident was to the effect that the steel was being erected according to the established practice in the trade (J.A. 2, 25, 26, 30, 35, 42).

At the conclusion of all evidence, and after proper instruction by the Trial Judge, the jury returned a verdict in favor of the plaintiff. This appeal followed.

SUMMARY OF ARGUMENT

The uncontradicted evidence in the case established that the purpose of the reinforcing steel rods in the concrete column known as E-14 was to give strength to the concrete, both compressive and tensile (J.A. 52, 74). Three witnesses (Hubbell, Snively and George) to the scene of the accident and the concrete column that broke testified that there was

no steel whatsoever exposed by the breaking off of concrete. These witnesses, together with the appellants' own witness, Manning, testified to the size of the break in the concrete and its location. The experts produced by the parties all agreed on the length and location of the reinforcing rods and the amount of concrete cover over the rods. The concrete cover required was one and a half inches over the steel rods and the same thickness on the sides. Thus, any break in the concrete over or next to a reinforcing rod in excess of one and a half inches would expose the rod.

The fact that no rods or steel of any kind were seen after the concrete broke would lead but to the conclusion that the rods were not where they should have been. The net result was that the concrete pier that was supporting the steel column did not have sufficient strength. Absent this strength, any normal movement of the steel during erection would cause the concrete to crack and break away.

Since the responsibility for installing reinforcing rods according to the specifications was that of the appellant Ray Gains, Inc., the absence of such rods at the location of the break in the concrete is evidence of negligence. Since the responsibility of the appellant Moses-Ecco was, by its own admission, to inspect all steel installation before concrete was poured, it too was negligent in failing to discover that the reinforcing rods were not properly installed.

The expert witness produced by the appellee, Mr. Toomey, stated quite clearly the function of the reinforcing rods and the part they play in giving strength to concrete that is being used to support a steel column. This testimony was substantially supported by Mr. Smislova, the expert produced by the appellants.

The jury has the function of considering all of the evidence and, after so doing, arrive at its verdict. The appellants would have this Court consider only so much of the evidence that is favorable to their respective positions. From the evidence in the entire record, the jury

could have concluded, and obviously did, that the appellant Gains was negligent in installing the reinforcing rods and that the appellant Moses-Ecco was negligent in failing to discover the improper installation of the rods. The jury could have further concluded, and obviously did, that the purpose and function of the reinforcing rods was to give strength to the concrete during the normal erection of steel. Absent the steel rods, the jury could have concluded that the concrete cracked and broke away and the steel fell, causing the appellee's injuries. The jury could have finally concluded that the absence of the reinforcing rods was a proximate cause of the accident. The appellee respectfully submits that the decision of the jury in finding in favor of the appellee against the appellants is supported by the evidence and should be affirmed.

ARGUMENT

I.

PLAINTIFF PRODUCED EVIDENCE OF NEGLIGENCE ON THE PART OF THE DEFENDANTS SUFFICIENT TO JUSTIFY A JURY FINDING TO THAT EFFECT

Plaintiff had the burden of producing evidence from which a jury could find negligence on behalf of the defendants. Plaintiff clearly met this burden. There was testimony to the effect that the purpose of reinforcing rods in concrete was to strengthen the concrete and the concrete would be sufficiently stronger if reinforcing bars "are as they should be." (J.A. 53, 69.) There was also evidence that showed there were no such rods in the concrete column in question. Three witnesses testified that they did not see any rods in the concrete when they looked at it immediately after the accident, and there was testimony of the defendant's supervisor who said he did not know if rods were there. If there had been rods properly set in the concrete, these three witnesses would have seen them,

since the concrete they looked at after the accident would have had the rods running through it (J.A. 36, 42-43, 102-103). There was testimony that the rods were required to run within one and a half inches from the top of the column. Since they did not see the rods, clearly, there was sufficient evidence for a jury to conclude that there were no rods in the concrete. It seems, in fact, more than an inference, but an obvious conclusion from uncontradicted testimony. The expert witness called by the appellant even testified that if the chunk of concrete were more than one and a half inches thick "you should see the bars." (J.A. 69.) If the jury believed, as they obviously did, that the three witnesses examined the chunk of concrete that broke off and that such concrete should have shown the rods and the witnesses did not see the rods, then the obvious conclusion they drew was that there in fact were no rods in the concrete. To say that there is no basis for this conclusion, or that it is mere speculation, is contrary to the weight of evidence. The only time a case should not be submitted to the jury is when there is *no* evidence upon which a jury could properly find for the plaintiff. *Gunning v. Cooley*, 281 U. S. 90.

In *Safeway Stores, Inc. v. Preston*, 106 U. S. App. D. C. 114, 269 F.2d 781, a customer slipped and fell on an onion skin in defendant's store. There was evidence that the defendant's clerk had swept this area 5 - 10 minutes before the accident. Defendant argued that another customer or the plaintiff could have dropped the onion skin and, therefore, the case should not have been submitted to the jury. The Trial Court, however, allowed the jury to draw the inference that defendant's clerk had negligently failed to sweep the onion skin, or negligently dropped it or that he had overlooked it. The Court of Appeals affirmed distinguishing cases like *Brodsky v. Safeway Stores, Inc.*, 80 U. S. App. D. C. 301, 152 F.2d 677, where the plaintiff made *no* effort to show how or by whom a dark spot on the floor had been created. Clearly, this case would fall within the ruling in *Preston* and not *Brodsky*, for the plaintiff not only presented

some evidence that there were no rods in the concrete, it produced substantial uncontradicted evidence from which a jury could infer nonexistence of the rods.

In *Pennsylvania R.R. Co. v. Pomeroy*, 99 U. S. App. D. C. 272, 239 F.2d 435, a passenger had fallen through open vestibule doors on defendant's railroad. There was no explanation of how or why the doors were open. A passenger could have opened them, the plaintiff could have opened them by mistake or any number of other possible inferences could be drawn. Here, obviously, the jury cannot speculate as to how the accident occurred. The court stated:

"This is not a case . . . where the evidence can be said to give some support to several conflicting possible inferences, *a situation where the jury's function is apparent*. The proof here sheds no light on either possibility . . ." (emphasis added)
239 F.2d at 443.

This is certainly distinguishable from the case before us. The testimony of three witnesses that they did not see any rods in the chunk of concrete that broke off the column obviously indicates that there were no rods in the column. Certainly, a jury can draw this inference, as this is their function.

"It is not the function of a court to search the record for conflicting circumstantial evidence in order to take the case away from the jury on the theory that the proof gives equal support to inconsistent and uncertain inferences. The focal point of judicial review is the reasonableness of the particular inference or conclusion drawn by the jury. It is the jury, not the court, which is the fact-finding body. It weighs the contradictory evidence and inferences, judges the credibility of witnesses . . . and draws the ultimate conclusion as to the facts. *The very essence of its function is to select from among conflicting inferences and conclusions that which it considers most reasonable*." *Tennant v. Peoria & P. U. Ry Co.*, 321 U. S. 29, 35. (emphasis added)

On appeal, also the evidence must be viewed "in the light most favorable to the appellees." *Washington Gas Light Co. v. Connolly*, 94 U. S. App. D. C. 156, 214 F.2d 254 (1954), and cases cited.

The following portions of the testimony of Mr. Manning, the concrete foreman for the appellant Moses-Ecco, established clearly that Moses-Ecco knew, through inspection, or in the exercise of reasonable care should have known, that the reinforcing rods were not properly installed by appellant Gains:

"THE WITNESS: I was superintendent for Moses-Ecco and in charge of their operation. We were a subcontractor.

"BY MR. KOONZ:

"Q. When you went to make your pour, for example, if you came across a column with no rods in it, would you go ahead and pour anyway? You would stop the job, would you not? A. Yes.

"Q. And you would call this to the attention of somebody, would you not? A. Yes.

"Q. On this job, if you came along and found that the rods for example were not where they should be for you to pour, would you not stop and call this to somebody's attention? A. If it was a reinforcing rod I would have the rod foreman pull them back to where they should have been.

"Q. But would you be on notice then that there was something wrong? A. If I saw something wrong, I would try to correct it, yes, sir.

"Q. So that you were in a position before the concrete was poured in your capacity as foreman of the concrete gang to check all of the steel reinforcing rods before the concrete was poured around them?

A. I did not check the steel in the sense that you are speaking of. The inspector did that and I would walk along with him and I would count the bars and observe the size of them, how they were spaced and whether they had the proper clearance from the wall.

"Q. There were literally thousands of bars on this job, were there not? A. Oh, yes.

"Q. So we are also talking about Prince George's County. This is where this occurred? A. Yes, sir.

"Q. How often for example would this inspector come out? A. He came out there every time we made a pour, even if it were only for one footing. He came out and inspected the bars and counted them and checked the dials and on one occasion he even checked the detailing.

"Q. So when you are to pour concrete, as far as you are concerned, if you have determined that your job is done you go right ahead and pour? A. Yes, sir.

"Q. But if there is something askew, in other words, there is a rod missing or steel missing or form or something like that and you know of this you do something about it? A. We would attempt to correct it, yes, sir.

"Q. Are you in a position or do you feel you are in a position to know that every reinforcing rod was where it should have been when you poured concrete on this job?

"MR. MAHONEY: Is this E-14?

"MR. KOONZ: I will talk about E-14.

"THE WITNESS: Yes, to the best of my knowledge all of the steel was in place and where it should have been.

"THE COURT: By steel you mean the —

"THE WITNESS: The reinforcing steel, sir.

"THE COURT: And the anchor bars — what would that embrace?

"THE WITNESS: I spoke specifically then about reinforcing steel.

"THE COURT: Would that embrace also the anchor bolt?

"THE WITNESS: Yes, sir.

"BY MR. KOONZ:

"Q. Mr. Manning, as the concrete foreman, did you know that you had to have one and a half inch cover around all of the steel? A. Yes, that is a standard requirement in the trade.

"Q. So any steel reinforcing rod, let us assume if we had the column right here, if I was to know exactly where that rod was placed before the concrete was poured and went in half an inch, I would hit steel, would I not, an inch and a half rather? A. Yes.

"MR. KOONZ: That is all.

"BY MR. GIONFRIDDO:

"Q. You say you had to go back and replace concrete on E-14 after the column fell? A. Yes, we put the patch back on.

"Q. How big an area did you have to patch?
A. Just the recess where the column sat in that pocket in the recess in an opening in the floor and it was done.

"THE COURT: What was the size of that?

"THE WITNESS: I would say that it would be down about between one and one and a half feet deep. We patched the top of that column as I see it drawn right there. We had to cut it back and repour it and put a new set of bolts in.

"BY MR. GIONFRIDDO:

"Q. Were you able to see the reinforcing steel?
A. Yes, we had to go down and we had to cut deep enough so that the new concrete would be bonded to the existing reinforcing.

"Q. When you found this existing reinforcing, was it where it was supposed to be? A. I do not know. That is too long ago.

"Q. If it was not where it was supposed to be from what you told Mr. Koonz would you not have —

"THE COURT: I think you are arguing with him now. I will sustain the objection to that, sir.

"MR. GIONFRIDDO: I have nothing further, Your Honor." (J.A. 81-84.)

This testimony establishes beyond question the negligence of Moses-Ecco. Since the testimony of three witnesses was to the effect that no steel was exposed or could be seen after the concrete broke away, appellant Moses-Ecco was obviously negligent in inspecting

column E-14 before concrete was poured over and around the reinforcing rods. From this evidence the jury could have concluded, and properly did, that Moses-Ecco was also negligent in permitting a dangerous condition, created by Gains, to continue when such condition could have been discovered and corrected through the exercise of reasonable care.

II.

THE ACTS OR OMISSIONS TO ACT ON THE PART OF THE APPELLANTS WERE A PROXIMATE CAUSE OF THE COLLAPSE OF THE STEEL

The well-established rule in the District of Columbia is that the proximate cause of an injury is a question for the jury. *Munsey v. Webb*, 32 App. D. C. 185, *affirmed*, 231 U. S. 150. In *Hanna v. Fletcher*, 97 U. S. App. D. C. 310, 231 F.2d 469, plaintiffs brought action to recover for injuries suffered in 1949 when the female plaintiff fell down steps of a building they leased from one defendant. The co-defendant, Gichner, had repaired the steps in 1942 and was named a defendant in the suit. The lower court held as to the defendant Gichner that even if plaintiff proved he had negligently repaired the steps, there was no liability as a matter of law because "the proximate cause of the injury is not his negligence but that of the owner in maintaining the premises." This Court reversed, holding that whether his negligence was a proximate cause "turns upon a question of fact, not of law," 231 F.2d at 473. On appeal, defendant contended that 7 years of deterioration from the elements could have caused the faulty railing. The Court, however, reasoned:

" . . . the opening statement contains detailed specifications of omissions and negligent acts in the course of the repair work. Whether true or not we do not know, that was for proof at a trial and then for jury consideration with the other evidence . . . negligence need not be stated in all possible ways."
(at page 474)

As to the proximate cause issue, again the Court stressed this was for the jury, citing a number of cases. It quoted in part from *Howard v. Swagart*, 82 U. S. App. D. C. 147, 151, 161 F.2d 651, 655, exclusively relied on by appellant Gains,

" . . . this court has defined the proximate cause of an injury to be 'that cause which, in natural and continual sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.' . . ."
(at page 475)

"We cannot say as matter of law that the fault of Gichner, assuming it were proved, was not a cause which in natural sequence, unbroken by any efficient intervening cause, produced the injury. Of course the jury could find for Gichner in this regard; but the law itself does not say that the passage of nearly seven years, or the action of the elements, with respect to a facility built for use while constantly exposed to the elements, constituted an efficient intervening cause of the giving away of the railing . . . In these circumstances the law says, we think, that the question of proximate cause is one of fact for the jury . . . *However heavy the plaintiffs' burden of proof in bringing home proximate cause to Gichner's negligence, the problem is within the realm of facts for the jury and not of law for the court except as the court must guide the jury by appropriate instructions.*" (emphasis added)

In the instant case there appears to be no question that the jury could have found that the absence of steel rods was a proximate cause of the appellee's injuries. The appellants premise much of their appeal on the alleged fact that the steel column was not properly plumbed. A review of the entire record discloses that there is no evidence whatsoever in this record to establish that the steel column was out of plumb any more than what is normal during that stage of steel erection. The only evidence directly on this point came from the appellee himself, and he merely conceded that the steel "could be a little bit out of plumb."

(J.A. 20.) However, both Mr. Smislova and Mr. Garlinski, experts called by the appellants, testified that the steel should be "very close to plumb" (J.A. 64) and "within the tolerance." (J.A. 89, 90.)

Testifying for the appellants, Mr. Smislova stated:

"There is no such thing as being exactly plumb."
(J.A. 64)

Thus, it can be readily seen that the appellants' entire theory of the case loses its effect when the record is considered as a whole. Once again these facts that are in dispute were to be resolved by the jury. In deciding for the appellee the jury quite properly resolved any factual issue there might have been.

In *Green v. Reynolds Metals Corp.*, 328 F.2d 372 (5th Cir. 1964), relied on by appellant Moses-Ecco, the plaintiff was working a narrow projection of roof when he fell. He had been working on the same roof for 13 weeks. The plaintiff's representative claimed that there were excessive amounts of dust on the ledge, but the uncontradicted evidence showed there was not. The Court stated there was "*no evidence presented*" in the case that indicated "what caused plaintiff to fall." The Court continued:

"There is no question but that proof of negligence may be made out completely with circumstantial evidence. In such instances *if there is evidence that points to any plausible theory of causation, there is basis for recovery.*" 328 F.2d at 375
(emphasis added)

In *Higashi v. Shifflett*, 90 U. S. App. D. C. 302, 195 F.2d 785 (1952), the question on appeal was whether the trial court was correct in directing a verdict for the defendant because there was not sufficient evidence of proximate cause for the jury. The Court stated:

"It was error for the court to rule as matter of law that the jury could not honestly conclude from this evidence that the defendant was negligent and that his negligence was a proximate cause of the injury . . ."

In *McGettigan v. National Bank of Washington*, 115 U. S. App. D. C. 384, 320 F.2d 703 (1963), *cert. denied*, 375 U. S. 943, a 9-year old boy had taken a flare from a building owned by the defendant. There was evidence that the building was not occupied, was in disrepair with windows broken, and that it was a "hangout" for undesirables. There was also evidence that defendants had notice of this situation. The trial court granted a motion for summary judgment as to the defendants and the plaintiff appealed. The Court of Appeals reversed. As to the proximate cause issue, the Court stated:

" . . . whether the negligence which we think can be made out on the facts here alleged will render the appellees responsible in damages is a question of proximate cause. We are told that the minor plaintiff's mother had an opportunity to see the flare and left it in reach of the child injured by it. We agree that the record supports such a view of the facts. But we are not prepared to say that the defendants' negligence, if any, was not a proximate cause of the injury . . . Furthermore, . . . even if two or more acts of negligence concur to produce a single injury, one tortfeasor is not relieved of liability merely because his negligence was earlier in time. It may still be a proximate cause of the injury." 320 F.2d at 709 (emphasis added)

It is basic hornbook law that the law does not recognize only one proximate cause of an injury. There is no "sole" proximate cause. To the contrary, several factors, for example, the acts or omissions of two or more persons, may work concurrently as the efficient causes of an injury, and in such a case each of the participating acts or omissions is regarded in law as a proximate cause.

In *Danzansky v. Zimbolist*, 70 App. D. C. 234, 105 F.2d 457 (1939), plaintiff was a passenger in defendant's car when it collided with another car. Plaintiff brought suit against both the second car and the owner of the car in which he was riding. The jury found for the plaintiff. On appeal, defendant argued that in order to support the verdict it must be

shown that the "sole" cause of the collision and the resulting injury was defendant's negligence. The Court of Appeals properly held that "this is not the law."

"The rule is settled by innumerable authorities that if injury be caused by the concurring negligence of the defendant and a third person, the defendant is liable to the same extent as though it had been caused by his negligence alone." See also, *Washington & G.R.R. v. Hickey*, 5 App. D. C. 436, affirmed, 166 U. S. 521 (1897).

The Court goes on to quote from an opinion by the Supreme Court in *Miller v. Union Pacific*, 290 U. S. at 236-267:

" The truth of the matter is that the causes of the injury were concurrent The effect of the former had not ceased, but cooperated with that of the other in effecting the injury. In such case an inquiry about the proximate cause is not pertinent, for both are liable.' In such a case, as here, it is sufficient that the negligence constitute a *contributing* cause. (emphasis theirs) 'If the negligence of the company contributed to, it must necessarily have been an immediate cause of, the accident, and it is no defense that another was likewise guilty of wrong.' " 105 F.2d at 459.

In *Winstead v. Hildenbrand*, 81 U. S. App. D. C. 368, 159 F.2d 25 (1946), plaintiff brought action for malpractice against the defendant doctor for total blindness. Plaintiff was suffering from syphilis and he was being treated by defendant with injections of tryparsamide. The trial court directed a verdict for the defendant on both negligence and proximate cause. This was reversed on appeal on both issues. As to the proximate cause the Court stated:

" The evidence showed that it was possible that the blindness might have been caused either by the syphilis itself or by the treatment, and that one of the first definite signs that tryparsamide is affecting the eyes is a sensation of light flashing and when this occurs an immediate examination should be made before continuing the use of the drug. In

the course of the trial plaintiff testified that he told the nurse . . . that he had experienced these light flashes. It is true that the nurse denied that he had made such a statement to her, but the jury were entitled to determine the truth as between the two witnesses, and if the jury accepted plaintiff's statement in this respect, some ground would thereby have been established to justify the jury in reaching the conclusion that the proximate cause of plaintiff's blindness was the continued use of the drug."

The authorities cited above are more than sufficient to serve as a basis for affirming the jury's verdict in this case. The appellee introduced sufficient evidence to support a conclusion of negligence against both appellants. Since the jury was entitled to draw reasonable inferences from the evidence of negligence, it was within the province of the jury to conclude that the accident was caused by the failure of the concrete resulting from the improper installation of the reinforcing rods. This the jury did, after being properly instructed by the Trial Judge. To disturb the verdict, in light of the evidence adduced at trial, would be contrary to well-established principles. Were this Court to reverse, it would, in effect, be substituting itself as the "trier of the facts." This, of course, could not be done and it is respectfully submitted, should not be done. The jury verdict should therefore be affirmed.

III.

THE TRIAL JUDGE PROPERLY DENIED MOTION FOR MISTRIAL

Appellant Moses-Ecco contends that counsel for the appellee improperly argued to the jury during closing arguments. Throughout the trial the appellants attempted to imply that the steel erection was improperly undertaken by Kenmar Steel. Yet, the record discloses that their evidence was woefully lacking on this point. Three witnesses,

who were actually erecting steel at the time of this accident, testified that the steel was being erected according to the practice in the trade (J.A. 2, 25, 26, 30, 35, 42). The business agent for Iron Workers, Local 5, also testified to the practice of erecting steel in this area (J.A. 99-100). This testimony by four witnesses was before the jury for its consideration.

The appellants introduced evidence on the weight of the steel beam that was attached to the steel column that fell. This beam weighed 7,000 pounds (J.A. 63). This beam was connected to another steel column along the outside wall. When the accident happened, only one steel column fell and the steel beam attached to it (J.A. 35). No other steel column fell at the time of this accident.

Thus, during closing argument, counsel for the appellee quite properly argued this fact to the jury. The very obvious purpose of this argument was to emphasize the unreasonable position the appellants were taking. If the weight of a 7,000 pound steel beam did not topple a steel column, how could three men, whose combined weight would be no more than 600 pounds, cause the steel column that did fall to come down? The logical conclusion could only be that the steel column that did fall was not properly supported at its base by the concrete. This conclusion is fortified by the fact that no reinforcing rods were seen in the concrete after it broke away. The fact that the very means, *i.e.*, reinforcing rods, used to strengthen the concrete which, in turn, supported the steel column during steel erection were missing, could lead but to the conclusion that the absence of such steel rods caused the steel column to fall.

It can therefore be reasonably inferred that no other steel column fell at the time of this accident because there was proper support in the concrete on which the steel columns were secured. By emphasizing this fact to the jury, counsel for the appellee properly presented closing argument.

The trial court was of the opinion that this argument was proper and without hesitation denied the motion for a mistrial. This action by the trial court should be affirmed. Counsel for the appellee's argument is set forth (J.A. 107) and speaks for itself.

CONCLUSION

The appellee respectfully submits that there is sufficient evidence in the trial record to establish that both appellants were negligent. There is sufficient evidence in the trial record to establish that the proximate cause of this accident was the negligence of the appellants. The jury was properly instructed by the Trial Judge on the applicable law. Having resolved any factual disputes in favor of the appellee, the jury returned its verdict. That verdict should be affirmed.

Respectfully submitted,

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BRIEF FOR APPELLANT RAY GAINS, INC.

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA ~~CIRCUIT~~

No. 21,111 FILED AUG 9 1967

MOSES-ECCO COMPANY, INC. *Nathan J. Paulson*
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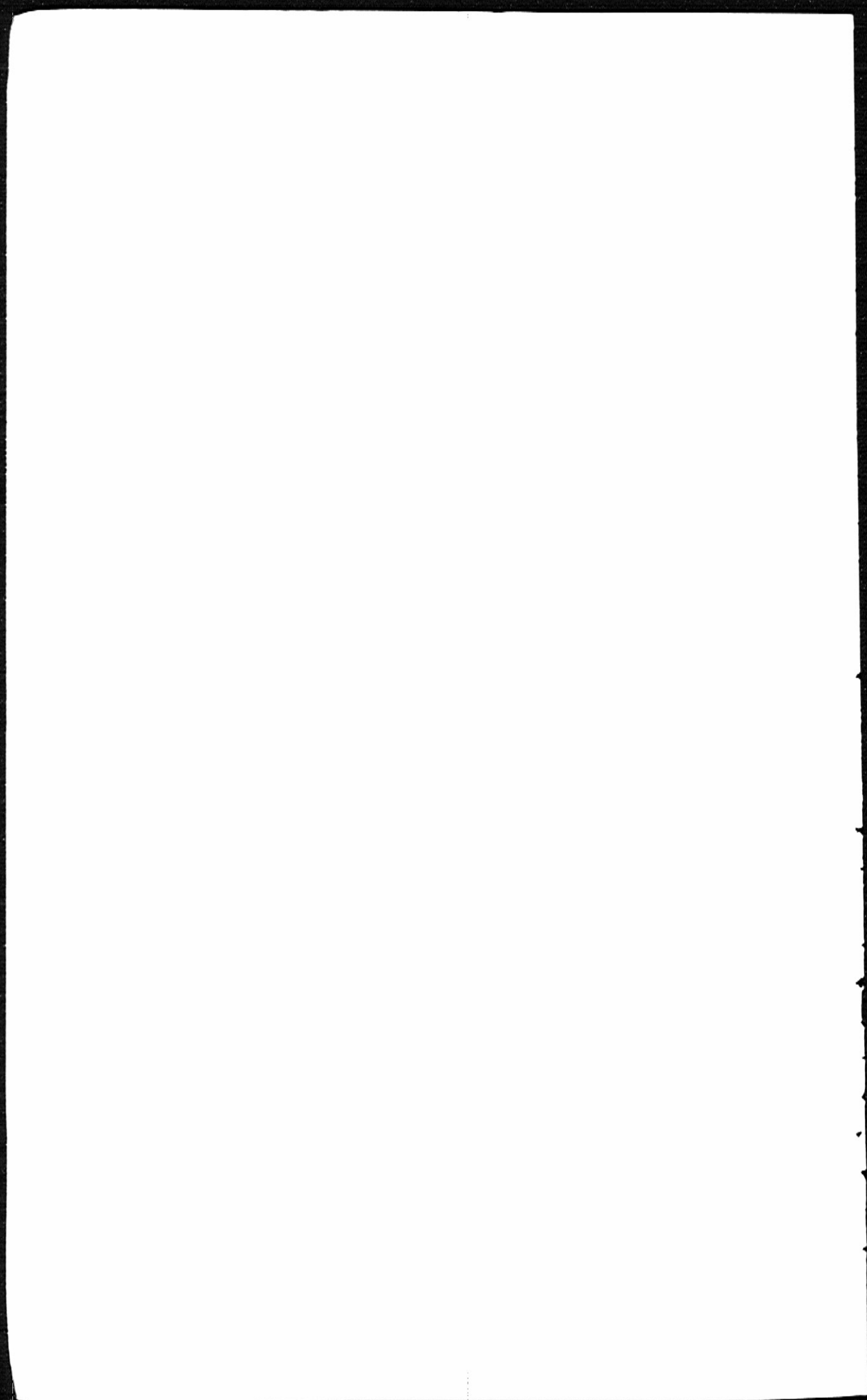
and
RAY GAINS, INC.,
Appellants,

v.

LINNEY WILLIAMS,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

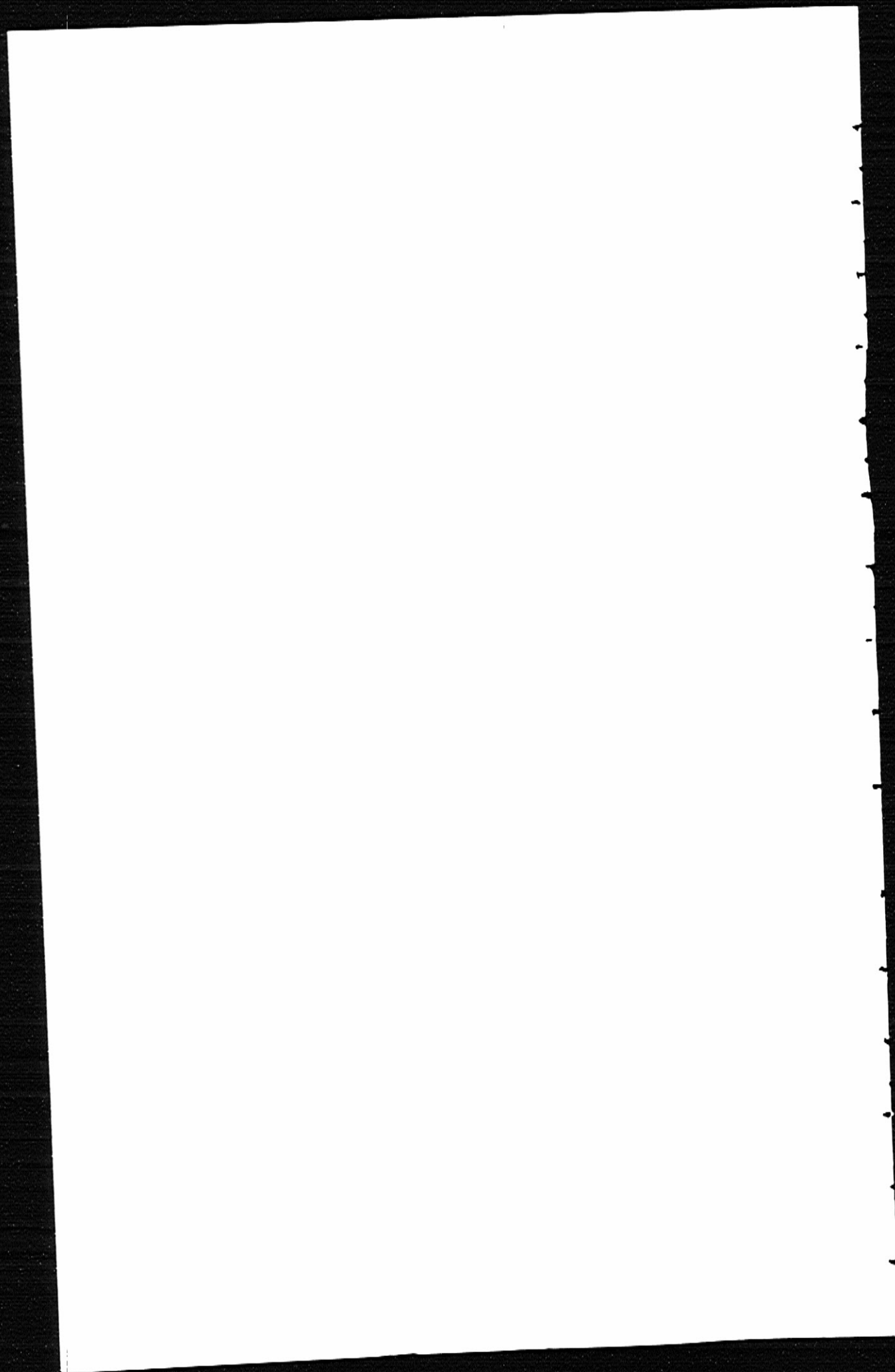
M. S. MAZZUCHI
JOHN F. GIONFRIDDO
405 Investment Building
Washington, D.C.
*Counsel for Appellant
Ray Gains, Inc.*



(i)

QUESTIONS PRESENTED

1. Was there sufficient evidence of negligence to submit the case to the jury?
2. Was there sufficient evidence of proximate cause to submit the case to the jury?
3. Did the District Court err in denying appellant's motion for directed verdict?

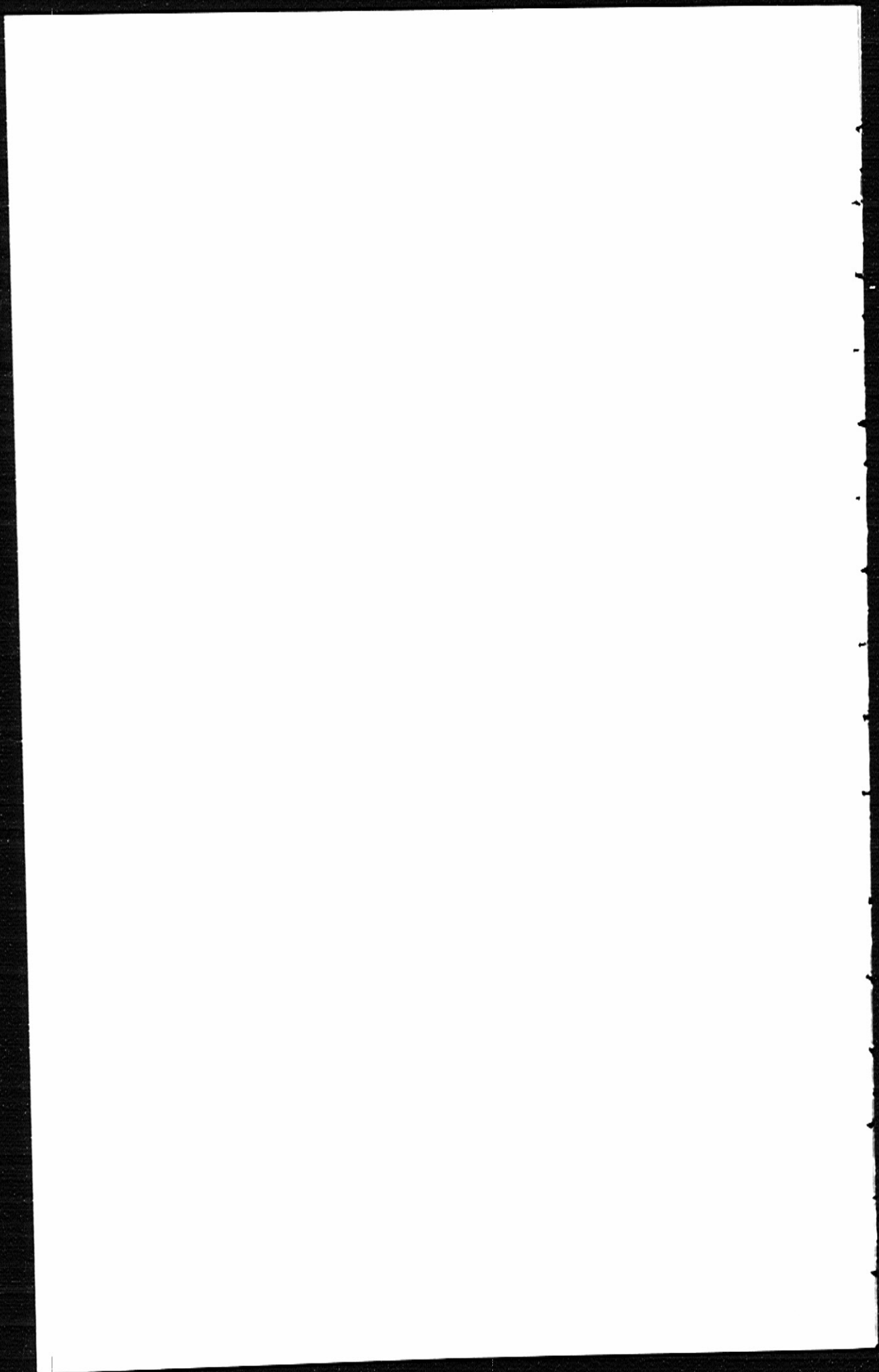


INDEX

JURISDICTIONAL STATEMENT	1
STATEMENT OF THE CASE	2
STATEMENT OF THE POINTS	3
SUMMARY OF ARGUMENT	3
ARGUMENT:	
I. The Evidence of Negligence Was Not Sufficient To Warrant Submission of the Case to the Jury	4
II. There Was Not Sufficient Evidence of Proximate Cause To Warrant Submission of the Case to the Jury.	7
CONCLUSION	10

TABLE OF CASES

Howard v. Swagart, 82 U.S App. D.C. 147, 161 F.2d 651	7
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IN THE
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No. 21,111

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and
RAY GAINS, INC.,
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v.

LINNEY WILLIAMS,
Appellee.

*APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLANT RAY GAINS, INC.

JURISDICTIONAL STATEMENT

This is an appeal from the judgment of the United States District Court for the District of Columbia entered in favor of Appellee Linney Williams against Appellant Ray Gains, Inc.

STATEMENT OF THE CASE

On July 31, 1961, the appellee was an employee of Kenmar Steel Construction Company, a contractor engaged in the erection of the steel superstructure of a certain building under construction in Prince George's County, Maryland.

In the course of his employment on that day, appellee was sitting on a steel joist, suspended between two steel beams approximately 25 feet above the floor. The two beams were bolted at each end to the tops of vertical steel columns. The columns were supported at the bottom by two anchor bolts but not guyed with guy wires. In addition to appellee, two companions were also working on the structure. As appellee made preparations to begin welding a bridge to the joist on which he sat, one of the vertical columns fell to the ground along with the beam, the joist on which appellee sat, and the bridging injuring appellee.

The 25 foot vertical column which fell had been placed some 15 minutes earlier on a reinforced concrete pilaster column which was part of the reinforced concrete outside wall of the building.

Appellant, Ray Gains, Inc., was the reinforcing contractor who had installed the reinforcing steel rods for that outside wall; and appellant, Moses-Ecco Company, Inc., was the concrete contractor who poured the concrete wall and pilaster, and placed the anchor bolts which supported the fallen vertical steel column.

Appellee brought this action against both appellants and the District Concrete Company, Inc. The action as to District Concrete Company was dismissed at trial and trial was had as to appellants only.

A verdict was returned by the jury in the amount of Fifty-Five Thousand (\$55,000.00) Dollars against both appellants.

This appellant moved for judgment notwithstanding verdict or in the alternative for a new trial; and appellant, Moses-Ecco moved to set aside the verdict for the appel-

lee or in the alternative for a new trial and for remittitur. Both motions were denied.

Appellee moved to amend his complaint to increase the Ad Damnum clause to conform to verdict. That motion was granted.

This appeal followed.

STATEMENT OF POINTS

1. Appellee failed to offer sufficient evidence of negligence to permit submission of the case to the jury.
2. Appellee offered no evidence of proximate cause from which the jury could make a determination.
3. The Court erred in denying Appellants' motion for a directed verdict.

SUMMARY OF ARGUMENT

1. Appellee failed to produce sufficient evidence of negligence to permit the case to be submitted to the jury. The negligence alleged was failure to properly tie reinforcing rods and failure to properly place reinforcing rods in the concrete on which the steel column rested.

Appellee offered no testimony as to the first allegation.

On the second allegation, he offered no evidence as to the placement of the rods. The testimony offered was only that steel rods could not be seen in the concrete after the accident at those points where the concrete broke. That testimony did not establish that the broken area viewed by the witnesses was the area in which steel rods were to be placed. The evidence offered was only that steel was not visible; there was no evidence that steel was not placed properly.

2. Appellee offered no evidence of proximate cause as to this appellant. There was an attempt to show through expert testimony that the concrete that failed under the fallen steel column would not have failed had the rods served the purpose for which they were installed. Appel-

lee's expert witness, not having witnessed the accident, testified in answer to detailed hypothetical questions based on the circumstances of the accident. He testified in detail that the purpose of steel reinforcing rods in the column was to give tensile strength to the concrete and that the concrete had good compressive strength itself. Given the circumstances of the accident, the expert testified that a tensile fracture of the concrete would result if the steel rods failed to perform their function. The fracture of the concrete that occurred however was conclusively a compressive fracture as described by the testimony of appellee's expert himself. There was therefore no evidence of causal connection between the failure of the concrete and the function or acts performed by this appellant.

ARGUMENT

I

The Evidence of Negligence Was Not Sufficient To Warrant Submission of the Case to the Jury

This matter came before the Court on two allegations of negligence as to this defendant.

First: The alleged "failure to place reinforcing rods around the area of the base of the column next to the anchor bolts according to specifications."

Second: The alleged "failure to properly tie reinforcing rods to provide maximum strength."

The specifications referred to were admitted in evidence as a joint exhibit and provided that the subject column be 20" x 14" and contain four number eight reinforcing rods. One rod was to be placed in a vertical position in each of the four corners of the column and connected by tie rods with a covering of concrete of one and one half inch on all outside areas.

The witness Joseph Matczyk, foreman for appellant, testified that he personally reviewed the column in question

after the steel was installed and that the steel met the specifications. He further testified that, following his review of the installation, he personally accompanied the building inspector during his inspection of the column with the plans for reference and that the inspector approved the column. (JA 94-95)

Mr. V. J. Manning, foreman of Appellant Moses-Ecco, testified that he was present when the inspector inspected the reinforced steel prior to pouring of the concrete and that the steel met requirements. (JA 75-76) Mr. Manning also testified that, after this appellant finished installing the steel and it had been approved by the county inspector, two or three days elapsed before appellant Moses-Ecco poured the concrete. (JA 76)

Mr. Matczyk estimated the time lapse between steel inspection and pouring as three or four days. (JA 95) It was during that period that forms were constructed around the reinforcing steel into which concrete would later be poured. After inspection and approval this appellant no longer had any control over the steel.

That evidence was in no way rebutted by appellee. The conclusion must be that the steel was installed properly and approved by the county inspector as meeting the specifications prior to the pouring of the concrete.

Appellee offered no evidence that the steel was not placed according to specifications but merely offered instead testimony that no steel was visible in the broken area of the column when viewed by his witnesses following the accident. The intended result being the speculation that steel was not present in the column because it was not seen.

On that point the appellee called three witnesses: Mr. Charles Hubbell who was the crane operator on the job, Mr. John Snively, a co-worker of plaintiff, and Mr. Preston George, the union representative. The testimony of the three was not consistent and they contradicted each other. Mr. Hubbell and Mr. Snively both testified that the steel column which fell, fell south or outside the build-

ing, and that the concrete which broke off, broke from the south side or outside of the column in the direction of the fall. (JA 40, 45) Both Mr. Hubbell and Mr. Snavely described the portion of concrete as a wedge. Mr. Hubbell estimated it as six inches to eight inches in length, eight inches to ten inches in height and three inches in thickness at the top. He placed its location on the column as at the base plate and described the anchor bolts beneath the plate as having pulled from the concrete and another "ball" of concrete clinging to the anchor bolts. Mr. Snavely described the concrete as a wedge approximately five inches at the top and eight inches to ten inches in height. He failed to place the area of the column from which the wedge had broken.

Mr. George was called as a rebuttal witness and not in the appellee's case in chief. His testimony contradicted that of appellee's other witnesses. He stated that the column fell into the building rather than out of it and that the broken concrete was from the inside of the column rather than the outside. (JA 103)

All the witnesses testified that they did not see any iron in the broken portion of the column. None of them testified nor could they testify that the iron was not in fact in the column. Not only was their testimony conflicting, but the area of the break was not placed with sufficient accuracy to establish that the area and depth of the break opened that portion of the column where the iron was to be located according to specification. It was purely speculative as to that point.

The burden was upon appellee to show as he alleged that this appellant failed to place reinforcing rods in the area of the anchor bolts according to specification, or that appellant failed to properly tie reinforcing rods. On the latter point he offered no evidence whatsoever. On the former point he offered only testimony that no rods were visible in the area of the break and the area of the break was not established.

The overwhelming weight of the evidence establishes that the reinforcing rods were properly installed, inspected against the specifications by the authorities and approved as meeting the requirements of the specifications.

II

There Was Not Sufficient Evidence of Proximate Cause To Warrant Submission of the Case to the Jury

The area in which appellee's evidence was completely lacking was on the question of proximate cause. Proximate cause is defined as,

"that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, *and without which the result would not have occurred*. It is the efficient cause — the one that necessarily sets in operation the factors that accomplish the injury. It may operate directly or by putting intervening agencies in motion." (emphasis added)

Howard v. Swagart, 82 U.S. App. D.C. 147, 161 F.2d 651.

There is agreement that appellee's injuries were sustained as a result of the falling of the steel column. That column had been erected by appellee's employer and co-workers. The only evidence as to why the column fell was that some force had been applied to the top of the column which was admittedly out of plumb. The evidence indicated the existence of some seven thousand (7,000) pounds of force at the top. (JA 63) There was no evidence that anything the appellants did or failed to do caused the column to fall. It would seem reasonable that the shifting weight of the appellee and his two companions began the movement which initiated the fall of the column. The appellee's entire case began with the premise that the column began to fall. The cause of the column beginning to fall is in no way ever attributed to the appellants. Appellee's evidence was all geared to a failure of concrete after first given a falling column.

There was no evidence that once the column began to fall anything either appellant could have done would have prevented it from falling all the way to the ground. To the contrary, appellee's expert, Mr. Toomey, testified that, given the falling column with a sufficient force, the anchor bolts would shear off if the concrete did not fall. (JA 55) The causal connection between any act or failure to act on the part of appellants and the fall of appellee is completely missing from the evidence. The burden is upon appellee to establish either that appellants caused the column to begin falling, which he did not do; or that once the column began to fall, it would not have fallen all the way had appellants not been negligent. That also the appellee did not do.

In order for appellee to establish a causal connection, he must show that, had appellants done that which he claims they did not do, the falling of the column would have been prevented.

If appellant does not establish that, and the column would have continued to fall in spite of any acts of appellants, then appellants' acts or omission are not a proximate cause of the injury.

Appellee therefore attempted through expert testimony to establish that the concrete on which the column rested would not have failed when the column fell, had reinforcing steel been placed in the concrete where he alleges it was not placed.

The expert testimony was offered through Mr. John Toomey. (JA 46 thru 57) Mr. Toomey established that the purpose of placing reinforcing steel in concrete columns is to give the concrete column tensile strength. Concrete has good compressive strength but no tensile strength. Therefore, had the steel rods performed their function, they allegedly would have prevented a tensile failure of the concrete. (JA 52)

The evidence however establishes without doubt that there was no tensile failure of the concrete but a com-

pressive failure and the rods were not intended to prevent such a failure.

According to Mr. Toomey, the falling column placed a force on the anchor bolts causing the hooks of the bolts to react like a claw hammer pulling a nail. That pulling force caused a tensile failure in the concrete. (JA 51 and 52)

The evidence however shows conclusively that the failure in the concrete did not occur as Mr. Toomey explained in theory but directly opposite.

All of the testimony offered is consistent on the one point that the side of the concrete column which failed was the side to which the column fell, not the opposite side. Both the witness Snively and the witness Hubbell testified that the column fell outside the building and the concrete chipped on the outside of the column. The witness George testified that the column fell into the building and the concrete chipped on the inside of the column. In each case, the failure was on the side of the direction of fall, a compression fracture not a tensile fracture. And according to Mr. Toomey's own testimony, the purpose of the steel rods was to give tensile strength not compression strength. Concrete, like sand, has good compressive strength in and of itself. (JA 49)

The failure which occurred was in no way attributable to a failure in tensile quality of the concrete column.

When specifically asked where a tensile failure would be manifested if the column fell outside the building, Mr. Toomey stated that the failure would occur on the inside (JA 56). This is opposite from what in fact occurred.

The purpose of reinforcing steel being to give tensile strength, absent a tensile failure there was no functional failure of the reinforcing steel in the column. There is no evidence to show a causal connection between the fall of the column itself and the appellant's acts, or the failure of the concrete and appellant's acts. The evidence is void of any showing of proximate cause.

CONCLUSION

There being insufficient evidence of negligence and no evidence of proximate cause, it is respectfully submitted that the judgment of the District Court should be reversed as to this appellant.

Respectfully submitted,

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